THE FINANCIAL SERVICES COMMISSION OF ONTARIO

PENSION BULLETIN

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The Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28 as amended, the Pension Benefits Act, R.S.O. 1990, c. P.8 as amended, R.R.O. 1990, Reg. 909 as amended, the terms of the pension plan and trust, if any, and the policies, procedures and practices of FSCO should be considered in determining specific legal requirements, and professional advice should be sought.

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GENERAL ANNOUNCEMENTS

BRYAN DAVIES DEPARTS FROM FSCO

On June 30, 2005, Bryan Davies will conclude his term as CEO and Superintendent of Financial Services.

In his role as pension regulator, Mr. Davies served as the Ontario member and Vice-Chair of the Canadian Association of Pension Supervisory Authorities (CAPSA) from 2003 to 2005, and as a CAPSA representative to the Joint Forum of Financial Market Regulators. As Chair of the CAPSA Model Law Committee, Mr. Davies led the national consultations on the *Proposed Regulatory Principles for a Model Pension Law* in 2004.

An executive search is underway to find a successor.

Pension Division - Staff Changes

The Pension Policy Unit (PPU) welcomes Celia Harte as a Policy Analyst, effective March 7, 2005.

Partial Wind Ups Post-*Monsanto*

The current *Ontario Pension Benefits Act* (PBA), which came into force on January 1, 1988, requires the distribution of pension plan surplus on both full and partial wind up of a pension plan. This requirement was confirmed by the Supreme Court of Canada in its decision in *Monsanto Canada Inc. v. Superintendent of Financial Services*, released on July 29, 2004.

What the Decision Means

In Ontario, all pension plans that undertake a partial plan wind up must distribute any surplus that relates to the partial wind up group as part of the partial wind up process, as required by subsection 70(6) and the definition of "partial wind up" under section 1 of the PBA. The actual treatment of the surplus, including any surplus distribution, must be in accordance with the terms of the pension plan and the requirements of the PBA and Regulation 909 made under the PBA.

Current Status of Partial Wind Up Reports Already Filed

- Where the report stated there was no surplus at the effective date of the partial wind up, the filing was complete and any outstanding questions were resolved. Superintendent approval of the partial wind up report was granted. With the distribution of the assets, the partial wind up is complete.

- Where the report indicated a surplus at the effective date of the partial wind up and approval of the partial wind up report was granted, with the distribution of the assets, the partial wind up is complete.

- Where the report indicated a surplus at the effective date of the partial wind up and no proposal for the distribution of the surplus was filed or approved, the Superintendent did not approve the partial wind up report, but provided approval under subsection 70(3) of the PBA to distribute the basic benefits once all benefit-related issues were resolved. Further filings to update the partial wind up report and deal with the surplus related to the partial wind up group are required at this time. Letters providing details of the filings required will be mailed to the affected plan administrators by August 29, 2004. Any affected plan administrator who does not receive a letter should contact FSCO as provided below.

- Where a hearing before the Financial Services Tribunal in respect of a partial wind up has been on hold pending the outcome of the *Monsanto* appeal, the hearing may now proceed at the request of a party to the hearing.

Current Status of Related Pension Policies

In the period since the Supreme Court decided to hear the *Monsanto* appeal, FSCO has been reviewing all pension policies related to wind up, partial wind up and surplus. A list indicating the status of the policy review process will be available shortly. The first new policy to be issued will be S900-511, Application by Employer for Payment of Surplus on Partial Wind Up of a Pension Plan.

Contact Information

If you have questions or concerns, please contact:

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Technical Consultant
Pension Plans Branch
Financial Services Commission of Ontario
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Box 85
North York ON M2N 6L9
Telephone: 416-226-7788
Toll Free: 1-800-668-0128, ext. 7788
E-mail: gardern@fsco.gov.on.ca

NOTE: It is anticipated that this document will be updated from time to time as FSCO completes its analysis of the implications of the Supreme Court of Canada decision.

COURT/PROSECUTION MATTERS

The information set out below is current to March 17, 2005

Court Matters

I. National Steel Car Limited

The Superintendent consented to the transfer of assets from the Amended Pension Plan for Salaried Employees of National Steel Car Limited (the "Salaried Plan") to the Amended Pension Plan for Hourly Employees of National Steel Car Limited (the "Hourly Plan"). The Superintendent's consent was given after submissions opposing the transfer were made by some members of the Salaried Plan. The letter giving the consent stated that anyone dissatisfied with the consent could request a hearing before the Financial Services Tribunal (FST). A hearing was requested.

The FST held the hearing on January 15 to 17, 2002. On May 31, 2002, the FST released its decision. In response to a motion brought by National Steel Car at the hearing, a majority decision held that the FST has no jurisdiction to conduct a hearing where the Superintendent has consented to the transfer of assets, relying upon the express wording of subsection 89(4). The panel unanimously found that if there was jurisdiction, the Superintendent's consent would have been upheld, as surplus was not an "other benefit" to be considered under subsection 81(5) of the PBA.

The Salaried Plan members appealed this decision to the Divisional Court. The appeal was set to be heard on January 29 and 30, 2004, but was adjourned to September 13 and 14, 2004. The appeal was heard on these dates. The Court allowed the appeal on the jurisdictional issue, indicating that reasons would be given later. The Court released its decision on December 1, 2004. The Court held:

a) the standard of review that applied to this decision is the standard of reasonableness on the transfer issue, but correctness on the jurisdictional issue;

b) there is implied jurisdiction for the FST to hold a hearing arising from the Superintendent's consent;

c) the transfer did not contravene section 81 of the PBA; surplus is not an "other benefit"; even if surplus was an "other benefit", the terms of the salaried plan permitted a merger and this case was therefore distinguishable from *Transamerica v. ING*.

The Salaried Plan members filed a Notice of Motion for Leave to Appeal with the Court of Appeal on the transfer issue which was dismissed for delay on March 9, 2005.

II. Plumbers Local 463 Pension Plan

The board of trustees of the Plumbers Local 463 Pension Plan has filed an application for judicial review in respect of an order issued by the Superintendent on October 6, 2003 requiring the trustees to pay the cost of an examination of the Plan out of the fund for the Plan. No hearing date has been set.

III. Donohue Forest Products Inc.

The spouse of a deceased plan member

has requested a hearing with respect to an NOP issued by the Superintendent on November 8, 2002 which refused to order the plan administrator to recalculate the pre-retirement death benefit owing. The pre-hearing conference was held on February 27, 2003 and continued on April 4, 2003 and on May 12, 2003, at which time a motion respecting 69 interrogatories made by the applicant was also heard and dismissed. The hearing took place July 2, 2003 and September 22 and 25, 2003. The panel released its decision on January 9, 2004, finding that the NOP should be affirmed.

The applicant filed a Notice of Appeal with the Divisional Court. The appeal was heard on November 10, 2004. The Court released its decision on November 10, 2004 dismissing the appeal.

The applicant has filed a Notice of Motion for Leave to Appeal with the Court of Appeal.

IV. Kerry (Canada) Inc.

The FST conducted a hearing that arose from a Notice of Proposal in which the Superintendent proposed to order Kerry (Canada) Inc. to reimburse certain expenses paid from the pension fund and to amend its Pension Plan so that only expenses for the exclusive benefit of the members could be paid from the fund.

The FST released its decision on March 4, 2004. The FST held that certain expenses were to be reimbursed to the fund, while certain other expenses did not have to be reimbursed as they were incurred for the exclusive benefit of the members. The FST also held that there was no jurisdiction under the PBA for the Superintendent to order a plan amended. A group of former members comprising the DCA Employees Pension Committee for the Pension Plan for the Employees of Kerry (Canada) Inc. has appealed the FST's decision to the Divisional Court.

In a separate decision on the refusal issue, the panel held that contribution holidays were permitted and authorized by the trust, and that there were no grounds for a partial windup or for an order compelling the Superintendent to monitor the plan. The panel held that the conversion breached the trust insofar as the revised plan text allowed surplus from the defined benefit portion of the plan to be used to fund liabilities for the defined contribution portion, as this diverted funds to the insurance contract with Standard Life. The panel directed the employer to either amend the plan text or transfer the defined contribution funds to the trustee; if this is not done within 90 days, the Superintendent is to refuse registration of the revised plan text.

Finally, the panel issued a separate decision concerning the members' committee's request that the legal costs incurred by the committee be paid out of the fund for the Plan. The majority of the panel determined that the FST did not have the jurisdiction to make such an order and also rejected the committee's request that costs be awarded against the employer.

In a separate Notice of Appeal, the members' committee has also appealed the panel's decision on the refusal and costs issues to the Divisional Court.

Both the appeal on the expenses issue and on the refusal and costs issues are set to be heard by the Divisional Court on March 31, 2005 and April 1, 2005.

V. Participating Co-Operatives of Ontario Trustee Pension Plan

The board of trustees of the Participating Co-Operatives of Ontario Trustee Pension Plan filed an application before the Divisional Court under Rule 14 of the Rules of Civil Procedure, the *Pension Benefits Act* and the *Trustees Act* for the appointment of replacement trustees or an administrator and a declaration discharging the current Trustees. The application was initially scheduled to be heard on February 3, 2005 but was rescheduled to February 8, 2005 at which time the hearing was adjourned pending a settlement conference.

VI. Vivendi Universal Inc.

Vivendi Universal Inc. has filed an application with the Ontario Superior Court of Justice for a declaration that the Québec *Supplementary Pension Plans Act* does not compel Vivendi to transfer surplus on behalf of Québec members on an asset transfer to Diageo Canada Inc. The application also asks for a declaration that the *PBA* applies to the transfer.

The Régie des Rentes du Québec has brought a motion to have Vevendi's application dismissed on jurisdictional grounds. The motion was heard by the Ontario Superior Court on March 2, 2005. The court reserved its decision.

PROSECUTION MATTERS

I. Mutual/Hadwen Imaging Technologies Inc.

Charges were laid against the employer, successor employer and two corporate officers for the employer and successor employer for failing to remit employer and employee contributions. The first appearance occurred on April 14, 2004 at which time a trial was scheduled for January 17 to 21, 2005. On January 17, 2005, the two corporate defendants pleaded guilty to one count of failing to remit employee contributions and were fined $2,500 each exclusive of the Victim Fine Surcharge. All other charges were withdrawn.

II. Flowserve Canada Inc.

The corporation has been charged, as the administrator of the Flowserve Canada Retirement Plan, with failing to file Pension Plan Financial Statements for the fiscal years ending 2000 and 2003, failing to file the Annual Information Return for the fiscal years ending 2000, 2001 and 2003 and failing to pay the filing fees for the Annual Information Return for the fiscal years ending 2000, 2001, 2002 and 2003. The first appearance was on February 9, 2005. The next appearance in court is on April 12, 2005.

III. Global Crossing Conferencing - Canada Ltd.

The corporation has been charged, as the administrator of the Employee Retirement Plan for Global Crossing Conferencing - Canada Ltd., with failing to file Pension Plan Financial Statements for the fiscal years ending 2001, 2002 and 2003, failing to

file the Annual Information Return for the fiscal years ending 2001, 2002 and 2003 and failing to pay the filing fees for the Annual Information Return for the fiscal years ending 1995, 2001, 2002 and 2003. The first appearance was on February when the matter was adjourned to April 6, 2005.

LEGISLATIVE CHANGES/REGULATORY POLICIES

Note: Pension policy L200-401 as published at page 9 of the January 2005 Pension Bulletin (Volume 14, Issue 1) contained errors in the fourth column of the chart on the second page of the policy. The correct version of L200-401 is set out below and can also be found on the Financial Services Commission of Ontario's website at: www.fsco.gov.on.ca.

Financial Services Commission of Ontario
Commission des services financiers de l'Ontario

SECTION:	Locked-In Accounts
INDEX NO.:	L200-401
TITLE:	2005 LIF Maximum Payment Amount Table
APPROVED BY:	Deputy Superintendent, Pensions
PUBLISHED:	FSCO website (December 2004)
EFFECTIVE DATE:	January 1, 2005

Note: Where this policy conflicts with the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28 ("FSCO Act"), Pension Benefits Act, R.S.O. 1990, c. P.8 ("PBA") or Regulation 909, R.R.O. 1990 ("Regulation"), the FSCO Act, PBA or Regulation govern.

The table on the following page has been prepared by the Financial Services Commission of Ontario (FSCO). Additional copies of this table and copies of policies published by FSCO about the Ontario LIF are available on FSCO's website at: www.fsco.gov.on.ca, or may be picked up in person at the reception desk, 4th Floor, 5160 Yonge Street, North York, Ontario.

Interest assumptions used in the table on the following page:

(1) 6.00%, which represents the greater of the CANSIM B14013 rate for November 2004 (4.87%) and 6.00% for the first 15 years, and

(2) 6.00% for the years remaining to the end of the year in which the LIF owner attains 90 years of age. (Assumption to age 90 is for the purpose of maximum payment calculation only. The balance of a LIF must be used to purchase a life annuity by the end of the year in which the LIF owner attains 80 years of age.)

Percentages shown must be prorated for the initial fiscal year if less than twelve months. Part of a month is treated as a full month.

2005 Maximum Annual Payment Amount Table for an Ontario Life Income Fund (LIF)

Age at January 1, 2005	New Age During 2005	Years to End of Year Age 90 is Attained	Maximum Payment as a Percentage of the LIF Balance as at January 1, 2005*
48	49	42	6.19655%
49	50	41	6.23197%
50	51	40	6.26996%
51	52	39	6.31073%
52	53	38	6.35454%
53	54	37	6.40164%
54	55	36	6.45234%
55	56	35	6.50697%
56	57	34	6.56589%
57	58	33	6.62952%
58	59	32	6.69833%
59	60	31	6.77285%
60	61	30	6.85367%
61	62	29	6.94147%
62	63	28	7.03703%
63	64	27	7.14124%
64	65	26	7.25513%
65	66	25	7.37988%
66	67	24	7.51689%
67	68	23	7.66778%
68	69	22	7.83449%
69	70	21	8.01930%
70	71	20	8.22496%
71	72	19	8.45480%
72	73	18	8.71288%
73	74	17	9.00423%
74	75	16	9.33511%
75	76	15	9.71347%
76	77	14	10.14952%
77	78	13	10.65661%
78	79	12	11.25255%
79	80	11	11.96160%

- The maximum annual payment percentage is calculated on the basis of a twelve-month fiscal year to December 31, 2005 using the interest assumptions on the previous page

Budget Measures Act (Fall), 2004 (Bill 149)

On December 16, 2004, the *Budget Measures Act (Fall), 2004* (Bill 149) amended a number of provisions under the *Pension Benefits Act* (PBA) to update references in those PBA provisions to the *"Labour Relations Act, 1995"*, the *"Employment Standards Act, 2000"*, the "Minister of Finance" and the use of "regular mail".

ONTARIO REGULATION 386/04

On December 10, 2004, Ontario Regulation 386/04 was filed under the *Pension Benefits Act* (PBA) to make the following amendments to Regulation 909 under the PBA (all section references below are to the relevant section of Regulation 909):

Surplus sharing regulation (s. 8) - The application of subsections 8(1) and 8(2) of Regulation 909 (requiring an employer to obtain the consent of pension plan members and certain other plan beneficiaries before being paid surplus on full or partial plan wind up) has been extended to December 31, 2006.

Commuted value calculation standard (ss. 19, 29) - Effective February 1, 2005, pension plans are required to use the new *Standard of Practice for Determining Pension Commuted Values* issued by the Canadian Institute of Actuaries (CIA) with an effective date of February 1, 2005. The new standard replaces the previous standard issued by the CIA with an effective date of September 1, 1993.

Deadline for making DC plan contributions (s. 4) - The deadline for employers to make contributions to defined contribution pension plans (i.e., within 30 days after the month for which the contributions are payable) has been clarified.

Deadline for filing a new plan's first actuarial valuation report (s. 13) - The deadline for filing a newly established defined benefit pension plan's first actuarial funding valuation report has been changed to 90 days (from the previous 60 day deadline).

Definition of "valuation date" for marriage breakdown purposes (s. 56) - The meaning of the words "valuation date" for the purposes of section 56 (which relates to the division of pension benefits on marriage breakdown) is clarified to mean the valuation date as defined in subsection 4(1) of the *Family Law Act* for family property division purposes.

Updated name references (ss. 22.2, 28, 28.1, 47) - The names of a number of statutes, pension plans and government organizations referenced in Regulation 909 are updated to reflect their current names.

Outdated prescribed Form 4 revoked - An old prescribed form, which had been replaced but had continued to be a formal part of Regulation 909, has been deleted from Regulation 909. The current version of Form 4 (Waiver of Pre-retirement Death Benefit), as approved by the Superintendent of Financial Services, is available on the Financial Services Commission of Ontario's website at: www.fsco.gov.on.ca.

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SECTION:	Administrative Expenses
INDEX NO.:	A200-802
TITLE:	Costs for Wind Up and Surplus Applications - PBA ss. 10(1)9 and 22(11)
APPROVED BY:	Superintendent of Financial Services
PUBLISHED:	FSCO website (March 22, 2005)
EFFECTIVE DATE:	March 22, 2005
REPLACES:	A200-801

This policy replaces A200-801 ("Costs for Wind Up and Surplus Applications") as of the effective date of this policy.

Note: Where this policy conflicts with the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28 ("FSCO Act"), Pension Benefits Act, R.S.O. 1990, c. P.8 ("PBA") or Regulation 909, R.R.O. 1990 ("Regulation"), the FSCO Act, PBA or Regulation govern.

When costs are incurred in preparing wind up and surplus refund applications, can these expenses be paid from the pension fund?

Paragraph 9 of subsection 10(1) of the PBA requires that the documents that create and support a pension plan include "the mechanism for payment of the cost of administration of the pension plan and pension fund". Subsection 22(11) of the PBA limits the payment of expenses from the pension fund to agents to "the usual and reasonable fees and expenses for the services provided by the agent in respect of the pension plan".

In the case of a wind up, the payment of expenses from the pension fund is governed by the language of the pension plan text, including any applicable trust documents.

In the case of a surplus refund application, the payment of expenses associated with the surplus application is considered as a payment to the employer. FSCO's policy is to require full disclosure in the surplus sharing agreement of all arrangements pertaining to the application for and distribution of surplus, including the use of any surplus to pay the expenses associated with the surplus application.

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SECTION:	Benefits
INDEX NO.:	B100-110
TITLE:	Consent Benefits Where Amount of Benefit Not Determinable - PBA ss. 10(1)7, 40(3), 74(7) - Regulation 909 s. 1(2)
APPROVED BY:	Superintendent of Financial Services
PUBLISHED:	FSCO website (February 2005)
EFFECTIVE DATE:	March 1, 2005

Note: Where this policy conflicts with the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28 ("FSCO Act"), Pension Benefits Act, R.S.O. 1990, c. P.8 ("PBA") or Regulation 909, R.R.O. 1990 ("Regulation"), the FSCO Act, PBA or Regulation govern.

Can a pension plan provide a consent benefit where the amount of the benefit is at the discretion of the employer?

No. All consent benefits provided by a pension plan must be determinable.

Paragraph 10(1)7 of the PBA requires that the method of determining benefits payable under a pension plan be set out in the documents that create and support the pension plan. This applies to all benefits, including those where the employer's consent is required to receive an ancillary benefit (i.e., a consent benefit). Accordingly, any plan provision that sets out a consent benefit where the amount of the benefit is at the discretion of the employer is inconsistent with paragraph 10(1)7 of the PBA. Such a provision must be amended to clearly set out the method of determining the benefit payable. If such a provision is not amended, the administrator of the plan should sever the provision or read it out of the plan.

Should the employer wish to provide an enhancement to selected individuals based on the previous wording of the provision, the method of determining the enhanced benefit must be set out in an amendment to the plan, taking into account policy B100-251("Amendments for Benefit Improvements-Notice and Funding, PBA, R.S.O. 1990, ss. 26(1)").

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SECTION:	Surplus
INDEX NO.:	S900-401
TITLE:	Partial Wind Up - Identification and Administration of Surplus - PBA ss. 70(1)(c) and 70(6) - Regulation 909 ss. 8(1) and 28.1
APPROVED BY:	Superintendent of Financial Services
PUBLISHED:	FSCO website (March 22, 2005)
EFFECTIVE DATE:	March 22, 2005
REPLACES:	S900-400

This policy replaces S900-400 ("Partial Wind Up - Identification and Administration of Surplus, Compliance with PBA, 1990 ss. 70(6)") as of the effective date of this policy.

Note: Where this policy conflicts with the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28 ("FSCO Act"), Pension Benefits Act, R.S.O. 1990, c. P.8 ("PBA") or Regulation 909, R.R.O. 1990 ("Regulation"), the FSCO Act, PBA or Regulation govern.

Subsection 70(6) of the PBA states:

> On the partial wind up of a pension plan, members, former members and other persons entitled to benefits under the pension plan shall have rights and benefits that are not less than the rights and benefits they would have on a full wind up of the pension plan on the effective date of the partial wind up.

It is FSCO's position, as confirmed by the Supreme Court of Canada in *Monsanto v. Ontario (Superintendent of Financial Services)*, that the rights and benefits referred to in subsection 70(6) of the PBA include any right to surplus assets that would exist had a full wind up of the pension plan occurred on the date of the partial wind up.

Assets in the wound up portion of the pension plan

Clause 70(1)(c) of the PBA requires that the administrator of a plan that is to be wound up in whole or in part file a wind up report that sets out "the methods of allocating and distributing

the assets of the pension plan and determining the priorities for payment of benefits". Furthermore, subsection 15(1) of the Regulation requires that the report under section 70 of the PBA must be prepared by an actuary. Accordingly, on partial wind up, it is the actuary's responsibility to identify assets related to the wound up portion of the plan. Where, in accordance with subsection 15(2) of the Regulation, the report is not prepared by an actuary, the party preparing the report must identify the assets related to the wound up portion of the plan.

The determination of the amount of assets related to a partial wind up must be done on a basis that is appropriate in the circumstances and must comply with the PBA and the Regulation, and have regard for any relevant FSCO policies, procedures and administrative practices. It is not acceptable to identify the assets in the wound up portion of the plan as those equal only to the partial wind up liabilities.

Administration of Assets

The split of the assets of the plan into two distinct pieces, the wound up portion and the on-going portion, may be either actual or notional. Where the plan administrator puts the assets related to the wound up portion of the plan in a separate trust, or segregates the assets within a master trust, an actual split is said to occur. Where the assets remain in a single trust, but separate sub-accounts are set up within the trust or separate tracking of the assets is set up for the wound up and on-going portions of the plan, a notional split is said to occur. Once the actual or notional split is complete, the plan administrator should review the suitability of the investments with regard to the assets of each portion and, where necessary, update the statement of investment policies and procedures to allow for any changes which follow from the review.

Distribution of the assets related to a partial wind up must conform with the proposals set out in the partial wind up report approved by the Superintendent of Financial Services. A supplement to a partial wind up report will be required if the surplus distribution proposals are not reflected in the initial partial wind up report. The partial wind up is complete only when all assets of the wound up portion of the plan have been distributed.

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SECTION: Surplus

INDEX NO.: S900-503

TITLE: Surplus Distribution - The Role of Legal Counsel in Obtaining Written Consent - Regulation 909 s. 8

PUBLISHED: Bulletin 6/2 (Summer 1995)

EFFECTIVE DATE: June 26, 1995 [references updated - February 2005]

Note: This policy is supplemental to S900-510 and S-900-511, which replaced S900-509 effective September 30, 2004.

The Role of Legal Counsel in Obtaining Written Consent Pursuant to Section 8 of Regulation 909

When some or all of the members, former members and other persons affected by a surplus withdrawal application are represented by legal counsel, they may choose to have their legal counsel negotiate an acceptable distribution. This administrative practice governs such situations.

Instead of receiving individual notice of the surplus application under subsection 78(2), those represented by legal counsel may instruct the administrator, through counsel or otherwise, to transmit the notice of application and surplus distribution proposal to their legal counsel. They may also authorize counsel to consent to a surplus distribution proposal on their behalf. This administrative practice does not establish guidelines respecting the scope of a legal counsel's authority to act on behalf of clients. However, if counsel purports to represent individuals entitled to share in a surplus distribution, the Superintendent of Financial Services will require counsel to provide the Superintendent with an affidavit setting out the following:

- the names of the persons represented by legal counsel including a description of their status in the pension plan (i.e., member, former member, other person);
- legal counsel's role in obtaining written consent (e.g., negotiate or negotiate and consent);
- where applicable, that the clients instructed the administrator to transmit notice of the application and the surplus distribution proposal to their legal counsel; and
- where applicable, that the clients of the legal counsel authorized the legal counsel to consent to the surplus distribution proposal on their behalf.

SUPERINTENDENT OF FINANCIAL SERVICES

Administrator Appointments - Section 71 of the *Pension Benefits Act*

1. Morneau Sobeco as the Administrator of the Pension Plan For Hourly Employees Retirement Plan J of Chun King Canada Ltd. (Registration Number 0597450), effective immediately.
   DATED at Toronto, Ontario, this 28th day of October, 2004

2. PricewaterhouseCoopers as the Administrator of the Pension Plan for Hourly-Paid Employees of Dunlop (Canada) Inc. (Registration Number 0375048), effective immediately.
   DATED at Toronto, Ontario, this 18th of February, 2005.

Notices of Proposal to Make an Order

IN THE MATTER OF *the Pension Benefits Act*, R.S.O. 1990, c.P.8, as amended (the "*Act*");

AND IN THE MATTER OF *a Proposal by the Superintendent of Financial Services to make an Order under section 69 of the Act*, in respect of the **Retirement Plan for Salaried Employees of Famous Players Limited and Subsidiary and Affiliated Companies, Registration Number 552752** (the "Plan");

TO: **Paramount Pictures (Canada) Inc.**
c/o Viacom Inc.
1515 Broadway Avenue
45th Floor
New York City, New York
10036-5794 USA

Attention: Betty Panarella
Vice President,
Development and
Employee Relations.
Employer and Administrator of the Plan

AND TO: **Blake, Cassels & Graydon LLP**
Barristers & Solicitors
Box 25 Commerce Court West
199 Bay Street
Toronto, Ontario, Canada
M5L 1A9

Attention: Caroline L. Helbronner
Lawyers for the Employer and Administrator.

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER under section 69 (1)(a) of the *Act* that the Plan be wound up in whole effective December 31, 2001.

REASONS FOR THE PROPOSED ORDER:

1. Paramount Pictures (Canada) Inc. (the "Employer") is the employer and administrator of the Plan.

2. On May 23, 2001, notices were sent to the members of the Plan regarding the Employer's proposal to terminate the Plan and share the surplus in the Plan with the members. Notices were issued to 141 former employees entitled to a deferred pension, retirees receiving pension payments and other persons entitled to payments under the Plan.

3. The Actuarial Report for the Plan as at December 31, 2001 (the "Report") states that as at December 31, 2001 there were 132 pensioners, beneficiaries and vested former members. The Report also states that there were no active members and the employer was not required to make contributions to the pension fund.

4. As at May 23, 2001, there was a cessation or suspension of employer contributions to the pension fund under section 69(1)(a) of the *Act*.

5. Such further and other reasons that may come to my attention.

YOU are entitled to a hearing by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the *Act*, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal

a written notice that you require a hearing.[1] Any notice requiring a hearing shall be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

THE ADMINISTRATOR IS REQUIRED pursuant to subsection 89(5) of the *Act*, to transmit a copy of this Notice of Proposal to Make an Order to the following persons: all former members of the Plan as at May 23, 2001.

DATED at North York, Ontario this 3rd day of December, 2004.

K. David Gordon
Deputy Superintendent, Pensions

[1] NOTE – PURSUANT TO section 112 of the Act, any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the day of mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the Act);

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(1) of the Act consenting to a payment out of the Pension Plan for Employees of Kingsley & Keith (Canada) Inc., Registration No. 559443.

TO: **2419742 Canada Inc. (formerly Kingsley and Keith (Canada) Inc.)**
C/O PMC Inc. and Subsidiaries
12243 Branford Street
Sun Valley CA
USA 91352

Attention: Ms. Tina Toy
Attorney
Applicant and Employer

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER under s. 78(1) of the Act, consenting to the payment, out of the Pension Plan for Employees of Kingsley & Keith (Canada) Inc., Registration No.559443 (the Plan), to **2419742 Canada Inc.** in the amount of $597,551 as at February 1, 2000 plus investment earnings to the date of the payment less any allowance for related expenses.

I PROPOSE TO MAKE THE ORDER effective only after the Applicant satisfies me that any payments to which members, former members and any other persons are entitled to have been made or otherwise provided for.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS :

1. 2419742 Canada Inc. is the employer as defined in the Plan (the Employer).
2. The Plan was wound up effective February 1, 2000.
3. As at February 1, 2000, the surplus in the Plan was estimated at $1,195,102.
4. The Plan provides for payment of surplus to the Employer on the wind up of the Plan.
5. The application discloses that by written agreement made by the Employer, and all of the active members and other members (as defined in the application) and all of the former members and other persons entitled to payments, the surplus in the Plan at the date of payment, after deduction of wind up expenses is to be distributed:
   a) 50% to the Employer; and
   b) 50% to the beneficiaries of the Plan as defined in the Surplus Distribution Agreement.
6. The Employer has applied, pursuant to section 78 of the Act, and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 50% of the surplus in the Plan after adding any investment earnings to the date of the payments and deducting the expenses related to the wind up of the Plan.
7. The application appears to comply with section 78 and subsection 79(3)(a) & (b) of the Act and with clause 8(1)(b) and subsections 28(5) and 28(6) of the Regulation.
8. Such further and other reasons as come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the Tribunal) pursuant to subsection 89(6) of the Act if,

within thirty (30) days after this Notice of Proposal is served[1] on you, you deliver to the Tribunal a written notice that you require a hearing.

Your written notice requiring a hearing must be delivered to:

Financial Services Tribunal
14th Floor, 5160 Yonge Street
North York ON M2N 6L9

Attn: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 11th day of January, 2005

K. David Gordon
Deputy Superintendent, Pensions

Donna Wolfe, Cowan Wright Beauchamp Limited

1 NOTE – PURSUANT to section 112 of the Act any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, R.S.O. 1997, c. 28; (the "Act");

AND IN THE MATTER OF a Proposal of the Deputy Superintendent, Pensions to Make an Order under section 69 of the Act relating to the **Non-Contributory Retirement Plan for Salaried Employees of Ford-Smith Machine Company Limited, Registration Number 288845** (the "Plan").

TO: **Morneau Sobeco**
895 Don Mills Road, Suite 700
1 Morneau Sobeco Centre
Toronto ON M3C 1W3

Attention: David R. Kearney, Senior Consultant
Administrator

AND TO: **Ford-Smith Machine Company Limited.**
901 Arvin Avenue
Stoney Creek ON L8E 5N9

Attention: Brian Thwaites
Employer

AND TO: **Grant Thornton Limited**
19th Floor, South Tower
Royal Bank Plaza
200 Bay Street, Box 55
Toronto ON M5J 2P9

Attention: Mr. Jake Weibe
Interim Receiver

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER in respect of the Plan under section 69(1) of the Act.

PROPOSED ORDER:
That the Plan be wholly wound up effective May 16, 2003 through July 18, 2003.

REASONS:

1. A significant number of members have ceased to be employed by the employer as the result of the discontinuance or reorganization of all of part of business of the employer pursuant to clause 69(1)(d) of the Act.
2. All or a significant part of the business has been discontinued at a specific location, pursuant to clause 69(1)(e) of the Act.
3. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to s. 89(6) of the Act. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.[1]

YOUR WRITTEN NOTICE must be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by phone at 416-226-7752, toll free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY MAKE THE ORDER PROPOSED IN THIS NOTICE.

DATED at North York , Ontario, this 20th day of January, 2005.

K. David Gordon
Deputy Superintendent, Pensions

NOTE - Pursuant to section 112 of the Act any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the Act);

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(1) of the Act consenting to a payment out of the Retirement Plan for The Employees of The Canadian Gas Association, Registration No. 0233155.

TO: **Canadian Gas Association**
350 Sparks Street
Suite 809
Ottawa, ON K1R 7S8

Attention: Michael Cleland
President and CEO
Applicant and Employer

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER under s. 78(1) of the Act, consenting to the payment, out of the Retirement Plan for The Employees of The Canadian Gas Association, Registration No.0233155 (the Plan), to **Canadian Gas Association** in the amount of $427,850 as at February 28, 2003, plus adjustments for investment returns and expenses thereto.

I PROPOSE TO MAKE THE ORDER effective only after the Applicant satisfies me that all benefits, benefit enhancements (including benefits and benefit enhancements pursuant to the Surplus Distribution Agreement set out in paragraph #5 below) and any other payments to which the members, former members, and any other persons entitled to such payments have been paid, purchased, or otherwise provided for.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS :

1. Canadian Gas Association is the employer as defined in the Plan (the Employer)
2. The Plan was wound up, effective February 28, 2003
3. As at February 28, 2003 the surplus in the Plan was estimated at $855,700.
4. The Plan provides for payment of surplus to the Employer on the wind up of the Plan
5. The application discloses that by written agreement made by the Employer, and 85% of the active members and 86% of the former members and other persons entitled to payments, the surplus in the Plan at the date of payment, after deduction of expenses is to be distributed:
   a) 50% to the Employer; and
   b) 50% to the beneficiaries of the Plan as defined in the Surplus Distribution Agreement.
6. The Employer has applied, pursuant to section 78 of the Act, and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 50% of the surplus in the Plan (after adding 50% of investment earnings and deducting 50% of the expenses related to the wind up of the Plan.)
7. The application appears to comply with section 78 and subsection 79(3) (a) & (b) of the Act and with clause 8(1)(b) and subsections 28(3), 28(5.1) and 28(6) of the Regulation.
8. Such further and other reasons as come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the Tribunal) pursuant to subsection 89(6) of the Act if,

within thirty (30) days after this Notice of Proposal is served[1] on you, you deliver to the Tribunal a written notice that you require a hearing.

Your written notice requiring a hearing must be delivered to:

Financial Services Tribunal
14th Floor, 5160 Yonge Street
North York ON M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 11th day of February, 2005

K. David Gordon
Deputy Superintendent, Pensions

Ms. Attila Bimbo

Mr. Edward Patkay

Mr. Marc Vigneault, Standard Life Assurance Company

[1] NOTE – PURSUANT to section 112 of the Act any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

Notices of Proposal to Make a Declaration

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990,c. P.8, as amended (the *"Act"*);

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make a Declaration under section 83 of the *Act* relating to the **Pension Plan for the Hourly Employees of Magnetek Polygon Transformer Co., a division of Magnetek National Electric Coil Limited, Registration Number 996942** (the "Plan").

TO: **Aon Consulting**
Suite 500
145 Wellington Street West
Toronto ON M5J 1H8

Attention: Mr. Frank Lee, FSA, FCIA
Administrator

AND TO: **National Electric Coil**
50 Northline Road
North York ON M4B 3E2

Attention: Mr. Jim Gray, General Manager
Employer

AND TO: **Canadian Union of Operating Engineers & General Workers**
2087 Dundas Street East , Unit 103
Mississauga ON L4X 2V7

Attention: Mr. Grgar Zoran
Union Representative

AND TO: **Doane Raymond Limited**
PO Box 55
Royal Bank Plaza, Suite 1100,
North Tower
Toronto ON M5J 2P9

Attention: **Mr. Ray Godbold**
Trustee in Bankruptcy
of Polygon Transformer Inc.

NOTICE OF PROPOSAL TO MAKE A DECLARATION

WHEREAS:

1. The Pension Plan for the Hourly Employees of Magnetek Polygon Transformer Co., a division of Magnetek National Electric Coil Limited (the "Plan") is registered under the *Act* as Registration Number 996942; and
2. The Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the *Act* or the regulations made thereunder; and
3. On January 1, 1994 the Company ceased contributing to the Plan; and
4. Magnetek Polygon Transformer Co. and its successor company, Polygon Transformer Inc., no longer exist, the latter entering into bankruptcy in April 1995; and
5. The Superintendent of Financial Services appointed MLH&A (now Aon Consulting Inc.) administrator of the Plan on October 20, 1995; and
6. On January 20, 2003 the Director, Pension Plans Branch, issued an order that the Plan be wound up effective December 31, 1993; and
7. On October 13, 2004 the administrator filed a wind up report for the Plan together with an application for a Declaration that the Guarantee Fund applies to the Plan; and
8. The administrator's preliminary estimate of the deficit in the Plan as at December

31, 1993 is $24,149 with a wind up funded ratio of 64.14%, and an estimated claim against the Guarantee Fund of $14,160; and

9. The administrator's estimate of the claim against the Guarantee Fund as at December 31, 2003 is $81,945;

NOW THEREFORE TAKE NOTICE I PROPOSE TO CONSIDER MAKING A DECLARATION in respect of the Plan under section 83 of the *Act* that the Guarantee Fund applies to the Plan for the following reasons:

REASONS FOR THE PROPOSED DECLARATION:

1. Magnetek Polygon Transformer Co. no longer exists.
2. The administrator has estimated the wind up funded ratio of the Plan to be 64.14%.
3. The estimated claim against the Guarantee Fund as at the wind up date is $14,160, increasing to an estimated $81,945 when projected forward to December 31, 2003.
4. There are reasonable and probable grounds for concluding that the funding requirements of the Act and regulation cannot be satisfied.
5. Such further reasons as may come to my attention.

YOU are entitled to a hearing by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the *Act*, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing[1]. Any notice requiring a hearing shall be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
North York ON M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE DECLARATION PROPOSED HEREIN.

DATED at North York, Ontario this 20th day of December, 2004.

K. David Gordon
Deputy Superintendent, Pensions

1 NOTE – PURSUANT TO section 112 of the Act, any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any documents sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the day

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, R.S.O. 1997, c. 28; (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make a Declaration under section 83 of the Act relating to the **Pension Plan for Employees of Outboard Marine Corporation of Canada Ltd. Registration Number 232967.**

TO: **Morneau Sobeco**
895 Don Mills Road, Suite 700
One Morneau Sobeco Centre
Toronto ON M3C 1W3

Attention: Mr. David R. Kearney, Senior Consultant
Appointed Administrator of the Plan

AND TO: **Outboard Marine Corporation of Canada Ltd.**
100 Sea-Horse Drive
Waukegan IL 60085

Attention: Ms. Darlene Lomax, Manager Benefits Administration
Employer

AND TO: **Ernst & Young**
35 Metcalfe Street, Suite 1600
Ottawa ON K1P 6L5

Attention: Mr. Greg Adams
Disbursement Receiver

NOTICE OF PROPOSAL TO MAKE A DECLARATION

WHEREAS:

1. The Pension Plan for Employees of Outboard Marine Corporation of Canada Ltd., (the "Plan"), is registered under the Act as Registration Number 232967; and
2. The Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the Act or the regulations made thereunder; and
3. The Superintendent of Financial Services appointed Morneau Sobeco administrator of the Plan on July 11, 2002; and
4. On December 11, 2003, the Superintendent of Financial Services issued an Order that the Plan was to be wound up effective August 1, 2000 through December 20, 2000; and
5. The administrator filed a wind up report for the Plan effective December 20, 2000, disclosing a surplus of $398,600 at the wind up date, and a projected deficiency of $216,300 as at May 1, 2004; and
6. On October 29, 2004 the said wind up report was approved by the Superintendent of Financial Services; and
7. On December 1, 2004 the administrator filed an application for a Declaration that the Guarantee Fund applies to the Plan, based on the said wind up report;

NOW THEREFORE TAKE NOTICE I PROPOSE TO CONSIDER MAKING A DECLARATION in respect of the Plan under section 83 of the Act that the Guarantee Fund applies to the Plan for the following reasons:

REASONS FOR THE PROPOSED DECLARATION:

1. There is a potential claim against the Guarantee Fund based on the deficiency of $216,300 in the Plan as at May 1, 2004.
2. The employer, Outboard Marine Corporation of Canada Ltd., was ordered into receivership on November 20, 2001.
3. The administrator has been advised that there is unlikely to be any distribution of funds from the Estate of Outboard Marine Corporation of Canada Ltd. to the Plan.
4. There are reasonable and probable grounds for concluding that the funding requirements of the Act and regulation cannot be satisfied.
5. If funds become available for the Plan from the Estate of Outboard Marine Corporation of Canada Ltd., the administrator will be required to make an appropriate refund of any allocation amounts received by the Plan from the Guarantee Fund.
6. Such further reasons as may come to my attention.

YOU are entitled to a hearing by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing[1]. Any notice requiring a hearing shall be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
North York ON M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE DECLARATION PROPOSED HEREIN.

DATED at North York, Ontario this 6th day of January, 2005.

K. David Gordon
Deputy Superintendent, Pensions

[1] NOTE - PURSUANT TO section 112 of the Act, any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any documents sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the day of mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, R.S.O. 1997, c. 28; (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make a Declaration under section 83 of the Act relating to the **Retirement Plan for Employees of Outboard Marine Corporation of Canada Ltd. Registration Number 232975;**

TO: **Morneau Sobeco**
895 Don Mills Road, Suite 700
One Morneau Sobeco Centre
Toronto ON M3C 1W3

Attention: Mr. David R. Kearney, Senior Consultant
Appointed Administrator of the Plan

AND TO: **Outboard Marine Corporation of Canada Ltd.**
100 Sea-Horse Drive
Waukegan IL 60085

Attention: Ms. Darlene Lomax
Manager Benefits Administration
Employer

AND TO: Ernst & Young
35 Metcalfe Street, Suite 1600
Ottawa ON K1P 6L5

Attention: Mr. Greg Adams
Disbursement Receiver

NOTICE OF PROPOSAL TO MAKE A DECLARATION

WHEREAS:

1. The Retirement Plan for Employees of Outboard Marine Corporation of Canada Ltd., (the "Plan"), is registered under the Act as Registration Number 232975; and
2. The Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the Act or the regulations made thereunder; and
3. The Superintendent of Financial Services appointed Morneau Sobeco administrator of the Plan on July 11, 2002; and
4. On December 17, 2003, the Superintendent of Financial Services issued an Order that the Plan was to be wound up effective August 1, 2000 through April 9, 2001; and
5. The administrator filed a wind up report for the Plan effective April 9, 2001, disclosing a surplus of $562,500 at the wind up date, and a projected deficiency of $505,300 as at May 1, 2004; and
6. On October 29, 2004 the said wind up report was approved by the Superintendent of Financial Services; and
7. On December 1, 2004 the administrator filed an application for a Declaration that the Guarantee Fund applies to the Plan, based on the said wind up report;

NOW THEREFORE TAKE NOTICE I PROPOSE TO CONSIDER MAKING A DECLARATION in respect of the Plan under section 83 of the Act that the Guarantee Fund applies to the Plan for the following reasons:

REASONS FOR THE PROPOSED DECLARATION:

1. There is a potential claim against the Guarantee Fund based on the deficiency of $505,300 in the Plan as at May 1, 2004.
2. The employer, Outboard Marine Corporation of Canada Ltd., was ordered into receivership on November 20, 2001.
3. The administrator has been advised that there is unlikely to be any distribution of funds from the Estate of Outboard Marine Corporation of Canada Ltd. to the Plan.
4. There are reasonable and probable grounds for concluding that the funding requirements of the Act and regulation cannot be satisfied.
5. If funds become available for the Plan from the Estate of Outboard Marine Corporation of Canada Ltd., the administrator will be required to make an appropriate refund of any allocation amounts received by the Plan from the Guarantee Fund.
6. Such further reasons as may come to my attention.

YOU are entitled to a hearing by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing[1]. Any notice requiring a hearing shall be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
North York, Ontario M2N 6L9

Attention. The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE DECLARATION PROPOSED HEREIN.

DATED at North York, Ontario this 6th day of January, 2005.

K. David Gordon
Deputy Superintendent, Pensions

1 NOTE - PURSUANT TO section 112 of the Act, any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any documents sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the day of mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, R.S.O. 1997, c. 28; (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make a Declaration under section 83 of the Act relating to the **Pension Plan for Hourly Employees of Ford-Smith Machine Company Limited, Registration Number 541565** (the "Plan").

TO: **Morneau Sobeco**
895 Don Mills Road, Suite 700
1 Morneau Sobeco Centre
Toronto ON M3C 1W3

Attention: David R. Kearney,
Senior Consultant
Administrator

AND TO: **Ford-Smith Machine Company Limited.**
901 Arvin Avenue
Stoney Creek ON L8E 5N9

Attention: Brian Thwaites
Employer

AND TO: **Grant Thornton Limited**
19th Floor, South Tower
Royal Bank Plaza
200 Bay Street, Box 55
Toronto ON M5J 2P9

Attention: Mr. Jake Weibe
Interim Receiver

AND TO: **United Steelworkers of America, Local 4843**
1031 Barton Street East
Hamilton ON L8L 3E3

Attention: Roy Leslie
Union Representative for the members of the Plan

NOTICE OF PROPOSAL TO MAKE A DECLARATION

WHEREAS:

1. The Pension Plan for Hourly Employees of Ford-Smith Machine Company Limited ("Ford-Smith"), is registered under the Act as Registration Number 541565 (the "Plan"); and
2. The Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the Act or the regulations made thereunder; and
3. On July 2, 2003 the Ontario Supreme Court of Justice appointed Grant Thornton Limited interim receiver for the employer; and
4. On July 2, 2003 all of the employees of the employer were terminated; and
5. On September 8, 2003 the Interim Receiver advised FSCO that the Ford-Smith business had not been sold and that all of the assets of Ford-Smith had been liquidated through public auction; and
6. The Superintendent of Financial Services appointed Morneau Sobeco administrator of the Plan on February 2, 2004; and
7. The appointed administrator of the Plan does not anticipate any recovery from the Plan from the said liquidation; and
8. On August 19, 2004 the administrator filed an application for a Declaration that the Guarantee Fund applies to the Plan; and
9. An actuarial opinion submitted with the application revealed that as of April 1, 2004 there were insufficient assets in the Plan to

cover the liabilities of the Plan determined on a wind up basis; and

10. On December 17, 2004 the administrator filed an application to the Superintendent to make an order that the Plan be wound up effective July 2, 2003 for members whose employment terminated during the period December 3, 2001 to July 2, 2003; and
11. On January 20, 2005 the Deputy Superintendent, Pensions, issued a notice of proposal to make an Order that the Plan be wound up effective December 3, 2001 through July 2, 2003;

NOW THEREFORE TAKE NOTICE I PROPOSE TO CONSIDER MAKING A DECLARATION in respect of the Plan under section 83 of the Act that the Guarantee Fund applies to the Plan for the following reasons:

REASONS FOR THE PROPOSED DECLARATION:

1. The Employer, Ford-Smith Machine Company Limited, no longer exists; has had its assets liquidated by the Interim Receiver to pay its secured creditors; and the Plan is to be wound up.

2. The administrator has estimated that there are insufficient assets in the Plan to cover the wind up liabilities of the Plan as at April 1, 2004.

3. The administrator does not expect there will any recovery from the estate or the liquidated assets of the Employer to meet any or all of the deficit in the Plan.

4. There are reasonable and probable grounds for concluding that the funding requirements of the Act and regulation cannot be satisfied.

5. Such further reasons as may come to my attention.

YOU are entitled to a hearing by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing[1]. Any notice requiring a hearing shall be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
North York ON M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE DECLARATION PROPOSED HEREIN.

DATED at North York, Ontario this 31st day of January, 2005.

K. David Gordon
Deputy Superintendent, Pensions

[1] NOTE – PURSUANT TO section 112 of the Act, any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any documents sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the day of mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c.P. 8, as amended by the *Financial Services Commission of Ontario Act, 1997*, R.S.O. 1997, c. 28;

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services (the "Superintendent") to make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act, 1997*, RSO. 1997, c. 28, respecting the **Slater Steel Inc. Pension Plan for Corporate Employees and Salaried Employees of Hamilton Speciality Bar Division, Registration Number 0308338 (the "Pension Plan");**

TO: **Morneau Sobeco (Regulatory Services) Inc.**
895 Don Mills Road, Suite 700
One Morneau Sobeco Centre
Toronto ON M2C 1W3

Attention: David Kearney
Principal
Administrator of the Pension Plan

AND TO: **Slater Steel Inc. Hamilton**
Specialty Bar Division
PO Box 2943 Hamilton,
Stn. LCD 1
319 Sherman Avenue North
Hamilton ON L8N 3P9

Attention: Peter Melnick
Controller
Employer

AND TO: **PricewaterhouseCoopers Inc.**
145 King Street West
Toronto ON M5H 1V8

Attention: Jeff Rosenberg
Receiver for Slater Steel Inc.

NOTICE OF PROPOSAL TO MAKE A DECLARATION

WHEREAS:

1. The Pension Plan is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P. 8 as amended by the *Financial Services Commission of Ontario Act, 1997*, c. 28, (the "Act"); and
2. The Pension Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the Act or the regulations made thereunder; and
3. Slater Steel Inc. issued a notice pursuant to section 68(2) of the Act to wind up the Pension Plan effective May 28, 2004. The notice was provided to members and former members of the Pension Plan and to any other persons entitled to payment from the Pension Plan. A copy of the notice was also provided to the Superintendent as required by the Act.

NOW THEREFORE TAKE NOTICE I propose to consider to make a declaration pursuant to section 83 of the Act that the Guarantee Fund applies to the Pension Plan for the following reasons:

1. The most-recent actuarial valuation report on the Pension Plan was prepared as of December 31, 2001 by Eckler Partners Ltd. This valuation determined that the Pension Plan had solvency assets of $20,172,000., solvency liabilities of $22,822,000. and a solvency deficiency (excluding the solvency asset adjustment) of $2,650,000. as at December 31, 2001 and a transfer ratio of 88.4%. Furthermore, the Administrator has filed an Actuarial Opinion by the Pension Plan actuary in which the actuary stipulated that the Pension Plan's assets are not sufficient to cover the liabilities of the Pension Plan on a wind up basis.
2. PricewaterhouseCoopers Inc. was appointed Receiver for Slater Steel Inc. on August 30, 2004 by the Ontario Superior Court of Justice.
3. Morneau Sobeco (Regulatory Services) Inc. was appointed as administrator of the Pension Plan on September 4, 2004 by the Superintendent.
4. The Administrator has advised staff that they will be filing a Proof of Claim with the estate of Slater Steel Inc. in respect of the deficiency in the Pension Plan. However, they were advised by the Receiver that there are no funds available for distribution to the Pension Plan.
5. The Administrator has also advised staff that there are reasonable and probable grounds for considering that the funding requirements of the Act and Regulation cannot be satisfied.

YOU are entitled to a hearing by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]. Any notice requiring a hearing shall be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
North York ON M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE DECLARATION PROPOSED HEREIN.

DATED at Toronto, Ontario this 28th day of February, 2005.

K. David Gordon
Deputy Superintendent, Pensions

[1] PURSUANT TO section 112 of the Act, any Notice, Order or other document is sufficiently given, served or delivered personally or sent by first class mail and any documents sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the day

Notice of Proposal to Refuse to Make an Order

IN THE MATTER OF *the Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the *"PBA"*);

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Refuse to Make an Order under Section 87(1) of the PBA Respecting the **Ontario Public Service Employees' Union Pension Plan Registration No. 1012046 (the "Plan")**

TO: **Mr. Julian Paul**
650 Lawrence Avenue West,
Unit 618
North York, Ontario M6A 3R8
Applicant

AND TO: **OPSEU Pension Trust**
1 Adelaide Street East
Suite 1200
Toronto, Ontario M5C 3A7
Administrator of the Plan

NOTICE OF PROPOSAL

I PROPOSE TO REFUSE TO MAKE AN ORDER under section 87(1) of the *PBA* directing the Plan to allow the Applicant to purchase past service credits in the Plan for the period December 3, 1977 to April 2, 1979.

REASONS FOR THE REFUSAL:

1. The Applicant worked with the Ministry of Natural Resources on a casual basis throughout 1977, 1978 and for the first quarter of 1979. During these periods the Applicant did not make any contributions to the prior plan in existence at that time, the *Public Service Superannuation Act R.S.O. 1970, c. 387* as amended (the "Old Act").
2. The Applicant was appointed to classified service on April 2, 1979 and began contributing to the Plan on that date.
3. The Applicant indicated to the Administrator of the Plan at that time, (the Ministry of Government Services (the "MGS")) that he wished to purchase the periods of non-contributory service between June 1977 to November 3, 1978 and November 14 to March 2, 1979 with the Ministry of Natural Resources by submitting a Statement and Application Elective Service Arrears form on August 5, 1980 ("Application Form"). The Application Form was signed by the Applicant on March 27, 1979.
4. MGS reviewed the Applicant's periods of non-contributory service and consistent with the practice at that time, did an assessment and determined the periods of eligible service that the Applicant was qualified to purchase pursuant to the Old Act, which provided for the purchase of non-credited service. After completing the assessment, MGS mailed a Notification of Arrears and Agreement to Contribute form MGS 565 (the "MGS 565 Form") to the Applicant on October 10,1980, setting out the period of eligible service the Applicant was entitled to purchase.
5. The MGS 565 form indicated that the Applicant was entitled to purchase 10 months and 4 days of prior non-contributory service between May 29, 1978 and April 1, 1979, for the lump sum cost of $654.52. The form also stated in bold print as follows: **" If we have not received the completed form within 3 months from the date of mailing, we shall treat your request as lapsed."**

6. The Applicant did not return the MGS 565 form within the stipulated 3 month period. As a result, the term of the agreement to purchase past service credits lapsed.
7. In the Applicant's letter dated July 2, 2003, he confirms that he did not take advantage of the opportunity to purchase previous non-contributory service credits which was available in 1980.
8. On December 31, 1989, *the Public Service Pension Act, 1989 c. 73* (the "New Act") came into force and the Old Act was repealed effective January 1, 1990. The option to purchase prior non-credited service under the Old Act ceased with this repeal, however, the New Act included a provision which gave Plan members a deadline to exercise the option to purchase prior non-credited service for periods prior to 1990. Pursuant to section 11(6) of Schedule I of the New Act, individuals who were Plan members on December 31, 1989, had until December 31, 1991 to submit a written application to the Administrator of the Plan for the purchase of any past service credit prior to January 1, 1990.
9. The Administrator used various means of informing Plan members as of December 31, 1989, of the deadline of December 31, 1991, to make a written application to purchase pre-January 1, 1990 past service credits. The Administrator published items in the Government of Ontario newsletter, *Topical*, provided a pamphlet for payroll distribution, issued a new member's booklet titled "Your Pension Plan," hosted information sessions and issued "Fact sheets" and "Administration Guidelines Manual" to advise Plan members of the December 31, 1991 deadline.
10. The Applicant did not complete and submit a written application to purchase past service credits for his past service before the December 31, 1991 deadline imposed by section 11(6) of Schedule I of the New Act.
11. Since the Applicant failed to satisfy the conditions set out in the New Act necessary for him to become eligible to purchase past service credits, the Administrator did not permit the Applicant to purchase past service credits under the Plan.
12. Section 19(1) of the *PBA* provides that: *"The administrator of a pension plan and the pension fund are administered in accordance with this Act and the regulations"*
13. Section 19(3)(a) of the *PBA* provides that: *"The Administrator of a pension plan shall ensure that the pension plan and pension fund are administered in accordance with, (a) the filed documents in respect of which the Superintendent has issued an acknowledgement of application for registration or a certificate of registration, whichever is issued later"*
14. The Superintendent of Financial Services (the "Superintendent") can make an order under section 87(1) of the *PBA* if he is of the opinion, on reasonable and probable grounds, that the condition set out in section 87(2)(a) of the *PBA* exists: i.e. the pension plan or pension fund is not being administered in accordance with the PBA, the *Regulation 909, R.R.O. 1990*, as amended (the "Regulation") or the pension plan.
15. For the reasons set out above, the Superintendent is not of the opinion that the Plan is not being administered in accordance with its terms.
16. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to s. 89(6) of the *PBA*. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.[1]

YOUR WRITTEN NOTICE must be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

For further information, contact the registrar of the Tribunal by phone at 416-226-7752, toll free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY REFUSE TO MAKE THE ORDER AS PROPOSED IN THIS NOTICE.

DATED at Toronto, Ontario, this 30th day of November , 2004.

K. David Gordon
Deputy Superintendent, Pension Division
By Delegated Authority

[illegible]

Notice of Proposal to Refuse to Approve

IN THE MATTER OF the *Pension Benefits Act* R.S.O. 1990, c. P.8, as amended (the *"Act"*);

AND IN THE MATTER OF a Report on the Actuarial Valuation of the Plan Termination as at December 31, 2001 dated May 7, 2002 in respect of the **Retirement Plan for Salaried Employees of Famous Players and Subsidiary and Affiliated Companies, Registration Number 552752 (the "Plan");**

TO: ***Paramount Pictures (Canada) Inc./Paramount Pictures (Canada) Inc.,***
c/o Viacom Inc.
1515 Broadway Avenue
45th Floor
New York City, New York
10036-5794 USA

Attention: *Betty Panaccio*
Vice President, Development and Employee Relations
Employer and Administrator of the Plan

AND TO: **Blake, Cassels & Graydon LLP**
Barristers & Solicitors
Box 25 Commerce Court West
199 Bay Street
Toronto, Ontario, Canada
M5L 1A9

Attention: Caroline L. Helbronner
Lawyers for the Employer and Administrator

NOTICE OF PROPOSAL

I PROPOSE TO REFUSE TO APPROVE the Report on the Actuarial Valuation of the Plan Termination as at December 31, 2001 (the "Report") dated May 7, 2002 pursuant to subsection 70(5) of the *Act*.

REASONS FOR PROPOSED REFUSAL:

1. Paramount Pictures (Canada) Inc. (the "Employer") is the employer and administrator of the Plan
2. The employer proposes to terminate the Plan effective December 31, 2001. The Report identified a surplus of wind up assets over wind up liabilities. The employer proposes to share the surplus assets that remain, after the settlement of all basic benefit entitlements of the members, former members and other persons entitled to benefits under the Plan at December 31, 2001, with such members, former members and other persons entitled to benefit.
3. The Report provides that the proposed termination of the Plan is contingent upon the receipt by Paramount Pictures (Canada) Inc. (the "Employer") of all the necessary approvals of the Plan termination and of the proposed surplus sharing agreements with the members, former members and other persons entitled to benefits under the terms of the Plan at December 31, 2001.
4. A Supplementary Report on the Plan Termination as at December 31, 2001 dated September 5, 2002 (the "Supplementary Report") provides that the termination of the Plan and the distribution of surplus is contingent upon the receipt by the Employer of all the necessary approvals, whether by the applicable regulatory authorities or by a court of competent jurisdiction, both of the Plan termination and of the surplus sharing agreement.

5. The Surplus Sharing Agreement provides at paragraph 2 that the Plan will be terminated if the conditions specified in paragraphs 8 and 9 of the Surplus Sharing Agreement are satisfied. Paragraph 9 of the Surplus Sharing Agreement provides that consenting Plan members agree that the Employer's proposals to terminate the Plan is conditional upon the company obtaining any approval that the Company in its sole discretion deems necessary or appropriate from the Superintendent and any other applicable legal or regulatory authority (including, without limitation, any court) to (i) pay the proposed Pension Enhancements and Lump Sum Payments to the members of the Surplus Sharing Group as contemplated by the Surplus Sharing Agreement, (ii) pay the remaining Plan Surplus to the Company, and (iii) give effect to any other provisions of the Surplus Sharing Agreement.
6. Section 68(1) of the *Act* provides that an employer may wind up a pension plan in whole or in part. The Financial Services Commission of Ontario's ("FSCO") Policy No. W100-103 expressly provides that section 68 of the *Act* allows for an employer to wind up a pension plan in whole or in part, but does not provide for a conditional wind up.
7. The Report and the Supplementary Report expressly provide that the proposal to wind up the Plan is conditional on the Employer obtaining the necessary regulatory and court approvals. As a result the Superintendent cannot accept a conditional wind up proposal.
8. Section 70(1)(b) provides that when a pension plan is being wound up, the wind up report shall set out the benefits to be provided under the pension plan to members, former members and other persons entitled to payments from the plan.
9. The Report, at Appendix D, lists the total number of pensioners, beneficiaries and vested former members that are affected by the Plan termination as 132, however, the Table of Member by Jurisdiction in the surplus sharing group at Appendix 13 of the Surplus Application is listed as 141 members. The Report therefore, does not include all the former members. Accordingly, the Superintendent cannot approve the Report.
10. Such further and other reasons that may come to my attention.

YOU ARE ENTITLED TO A HEARING before the Financial Services Tribunal of Ontario (the "Tribunal") pursuant to subsection 89(6) of the *Act* if you deliver to the Tribunal, within thirty (30) days of the date of service of this Notice of Proposal, notice in writing requiring a hearing. Any notice requiring a hearing should be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
North York, Ontario M2N 6L9

Attention: The Registrar

IF YOU FAIL TO DELIVER TO THE TRIBUNAL within thirty (30) days from the date this Notice of Proposal is served on you a written notice that you require a hearing, I may make the order proposed in this Notice of Proposal.

DATED at Toronto, Ontario, this 3rd day of December, 2004.

K. David Gordon
Deputy Superintendent, Pensions

document is sufficiently given, served or delivered if
nt by first class mail shall be deemed to be given, served

Notices of Proposal to Refuse to Consent

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the *"Act"*);

AND IN THE MATTER OF an Application under section 78(1) of the *Act* submitted by Paramount Pictures (Canada) Inc. in respect of the **Retirement Plan for Salaried Employees of Famous Players and Subsidiary and Affiliated Companies, Registration Number 552752** (the "Plan").

TO: **Paramount Pictures (Canada) Inc.**
c/o Viacom Inc.
1515 Broadway Avenue
45th Floor
New York City, New York
10036-5794 USA

Attention: Betty Panarella
Vice President, Development and Employee Relations.
Employer and Administrator of the Plan

AND TO: **Blake, Cassels & Graydon LLP**
Barristers & Solicitors
Box 25 Commerce Court West
199 Bay Street
Toronto, Ontario M5L 1A9

Attention: Caroline L. Helbronner
Lawyers for the Employer and Administrator

NOTICE OF PROPOSAL TO REFUSE TO CONSENT TO APPLICATION

I PROPOSE TO REFUSE TO CONSENT to the application for withdrawal of surplus dated January 9, 2003 submitted by **Paramount Pictures (Canada) Inc.** (the "Employer"), for the payment of surplus on the wind up of the Plan to the Employer under section 78(1) of the *Act*.

REASONS FOR THE PROPOSED REFUSAL:

1. The Employer submitted the application for refund of surplus dated January 9, 2003 (the "Surplus Application") on the basis that the plan is being wound up. Section 79(3)(b) of the *Act* provides that the Superintendent shall not consent to an application by an employer in respect of surplus in a pension plan that is being wound up in whole or in part unless the pension plan provides for payment of surplus to the employer on the wind up of the pension plan.
2. The Employer proposes to terminate the Plan effective December 31, 2001. The Wind Up Report dated May 7, 2002 (the "Report") provides that the proposed termination of the Plan is contingent upon the receipt by Paramount Pictures (Canada) Inc. (the "Employer") of all the necessary approvals of the Plan termination and of the proposed Surplus Sharing Agreements with the members, former members and other persons entitled to benefits under the terms of the Plan at December 31, 2001.
3. A Supplementary Report on the Plan Termination as at December 31, dated September 5, 2002 (the "Supplementary Report") provides that the termination the Plan and the distribution of surplus is contingent upon the receipt by the Employer of all the necessary approvals, whether by the applicable regulatory authorities or by a court of competent

jurisdiction, both of the Plan termination and of the Surplus Sharing Agreement.

4. Therefore the Report and the Supplementary Report provide that the wind up of the plan is conditional. Section 68 of the *Act* only allows an employer to wind up a plan in whole or in part and does not provide for a conditional wind up proposal to wind up a pension plan. Since the Plan is not wound up, section 68 of the *Act* does not apply. Therefore, section 79(3)(b) of the *Act* cannot apply to the Surplus Application.
5. Since the Plan is not wound up, it is a continuing pension plan and the Employer must satisfy the requirements in section 79(1)(b) of the *Act*. Section 79(1)(b) of the *Act* provides that the Superintendent shall not consent to the payment of surplus to the employer out of a continuing pension plan unless the pension plan provides for the withdrawal of surplus by the employer while the pension plan continues in existence, or the applicant satisfies the Superintendent that the applicant is otherwise entitled to withdraw the surplus.
6. Further, section 10(2) of Regulations 909 R.R.O. 1990 (the "Regulations") provides that all persons who are entitled to receive benefits under the pension plan must consent to the terms upon which surplus is to be paid out of the Plan. Appendix 11 of the Surplus Application shows that 85.8% of the former members consented and not 100% as required by section 10(2) of the Regulations.
7. In any event, the Employer has not demonstrated that it has complied with section 79(3)(b) or 79(1)(b) of the *Act*, which require that the pension plan provide for payment of surplus to the employer on wind up of the Plan.
8. The Plan is the continuation of a pension plan established by Famous Players Canadian Corporation Limited ("FPCC") effective January 1, 1966 for the Salaried Employees of Famous Players Canadian Corporation Limited and Subsidiary and Affiliated Companies (The "FPCC Plan"). FPCC which was owned 50% by FPL and 50% by a third party Canadian controlled corporation.
9. The FPCC Plan, section 2.01, provided that all contributions of the members and the Employer will be paid into a Pension Trust Fund which will be administered by the Trustees in accordance with the terms of the Trust Agreement which forms part of the Plan. The FPCC Plan was funded by a trust agreement made between FPCC and Montreal Trust dated December 23, 1965 (the "1965 Trust"). Paragraph 2 of the preamble of the 1965 Trust provides that under the FPCC Plan "..funds will be contributed to the Trustee, which funds as and when received by the Trustee will constitute a trust fund to be held and administered for the benefit of the employee members of the Plan or their beneficiaries .."
10. Article Third of the 1965 Trust also contained a clause, that "...no part of the Trust Fund (other than such part as is required to pay taxes and administration fees and expenses) shall be used for, or diverted to, purposes other than for the exclusive benefit of the employee members of the Plan or their beneficiaries or estates." "Trust Fund" is defined in Article First of the 1965 Trust as all contributions received by the Trustee together with the income therefrom.
11. Article Thirteenth of the 1965 Trust specifically provided that the Trustee's

power to pay out the Trust Fund on termination is subject to the provisions of Article Third. Similarly, Article Twelfth, which granted the Employer power to modify or amend the 1965 Trust Agreement, was made subject to the provisions of Article Third.

12. The 1965 Trust did not contain a provision authorizing the Company to revoke the 1965 Trust.
13. There is no evidence that the 1965 Trust was ever terminated or exhausted.
14. Therefore, a trust was created in 1965 which covered surplus assets. The employer was not a beneficiary of the trust nor did it have the power to revoke the trust. Further, its power to amend the trust was subject to the provision that the funds were to be used for the exclusive benefit of the employee members of the Plan or their beneficiaries or estates.
15. The 1965 Trust was subsequently amended and replaced by a Trust Agreement made between FPCC and Montreal Trust Company, dated January 2, 1969 to provide that in the event of discontinuance of the Plan, the Trustees shall pay the Employer any remainder in the Trust Fund after all claims and liabilities on the fund under the terms of the Plan have been satisfied.
16. The terms of the 1965 Trust do not authorize a payment of surplus to the Employer. The subsequent amendment to the 1965 Trust to provide for the reversion of the surplus to the Employer constitutes a revocation or partial revocation of the trust which is not authorized in the original trust agreement, the 1965 Trust, and is therefore invalid.
17. In 1970, the FPCC Plan was amended and restated as two separate plans, the Retirement Plan for Salaried Employees of Famous Players Canadian Corporation Limited and Subsidiary and Affiliated Companies (the "FPCC Non-Contributory Plan"), which was to provide benefits fully paid by the employer, and the Savings Plan for Salaried Employees of Famous Players Canadian Corporation Limited and Subsidiary and Affiliated Company (the "FPCC Savings Plan"), which was to provide benefits from employee contributions together with employer profit sharing allocations. The Surplus Application is in relation to the FPCC Non-Contributory Plan.
18. In 1971, the FPCC changed its name to Canadian Cablesystems Limited ("Cablesystems"), which then sold its theatre assets to FPL.
19. Pursuant to the Purchase and Sale Agreement between Cablesystems and FPL made January 3, 1971 ("1971 Purchase and Sale Agreement"), FPL assumed responsibility for the assets and liabilities of the FPCC Non-Contributory Plan and the FPCC Savings Plan.
20. By a resolution of the directors of Cablesystems in 1971 the name of the FPCC Non-Contributory Plan was changed to the Retirement Plan for Salaried Employees of Famous Players and Subsidiary and Affiliated Companies (the "FPL Plan") and the name of the FPCC Savings Plan was changed to the Savings Plan for Salaried Employees of Famous Players and Subsidiary and Affiliated Companies (the "FPL Savings Plan").
21. By a resolution of the board of directors of FPL dated May 17, 1971, FPL adopted both the FPL Plan and the FPL Savings Plan.
22. FPL entered into an amending agreement with Cablesystems and Montreal Trust

Company (the "Trustees") dated July 1, 1971 ("1971 Amending Agreement") whereby, in respect of the Trust Agreement:

a. FPL accepted all the duties imposed upon it under the FPL Plan, the FPL Savings Plan and the Trust Agreement as the successor employer to Cablesystems.
b. The Trust Agreement was amended and restated as two separate trust agreements, one in respect of the Savings Plan and the other in respect of the FPL Plan (the "1971 FPL Trust").

23. The 1971 FPL Trust provided at Article Third that in the event of discontinuance of the Plan, the Trustees shall pay the Employer any remainder in the Trust Fund after all claims and liabilities on the fund under the terms of the Plan have been satisfied. Since the terms of the 1965 Trust Agreement do not authorize a payment of surplus to the Employer this amendment and the subsequent amendments to the trust to provide for the reversion of the surplus to the Employer constitute a revocation or partial revocation of the trust which is not authorized in the original trust agreement, the 1965 Trust, and are therefore invalid.
24. The Employer has therefore not demonstrated that it has complied with section 79(3)(b) of the Act which requires that the pension plan provide for payment of surplus to the employer on wind up of the Plan, or with section 79(1)(b) of the *Act*.
25. Such further and other reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING before the Financial Services Tribunal of Ontario (the "Tribunal") pursuant to subsection 89(6) of the *Act*. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.[1]

YOUR WRITTEN NOTICE must be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
North York, Ontario
M2N 6L9

Attention: The Registrar

For further information, contact the Registrar of the Tribunal by phone at 416-226-7752, or toll free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY REFUSE TO CONSENT TO THIS APPLICATION, AS PROPOSED IN THIS NOTICE OF PROPOSAL.

DATED at North York , Ontario, this 3rd day of December, 2004.

K. David Gordon
Deputy Superintendent, Pensions

1 PURSUANT TO section 112 of the Act, any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the day of mailing.

Consents to Payments

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the Act);

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(1) of the Act consenting to a payment out of the GPC Canada Inc. Pension Plan for J. Patrick Howe, Registration Number 0681619.

TO: **GPC Canada**
Suite 1300
100 Queen Street
Ottawa, ON K1P 1J9

Attention: John Scott
VP & General Counsel
Applicant and Employer

CONSENT

On or about November 7, 2003, the Superintendent of Financial Services caused to be served on GPC Canada Inc. a Notice of Proposal dated November 7, 2003 to consent, pursuant to subsection 78(1) of the Act, to the payment out of the GPC Canada Inc. Pension Plan for J. Patrick Howe, Registration Number 0681619, to GPC Canada Inc. in the amount of $12,000 as at January 1, 2003 with no adjustments to the date of payment .

No Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the Act.

THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS to the payment out of the GPC Canada Inc. Pension Plan for J. Patrick Howe, Registration Number 0681619, to GPC Canada Inc. in the amount of $12,000 as at January 1, 2003 with no adjustments to the date of payment.

THIS CONSENT IS EFFECTIVE ONLY AFTER the Applicant satisfies me that provision has been made for the settlement of liabilities of the pension plan as calculated for purposes of termination of the pension plan, and on the remainder of the surplus being paid to the member.

DATED at Toronto, Ontario, this 4th day of November, 2004

Tom Golfetto,
Director, Pension Plans Branch
by Delegated Authority from
the Superintendent of Financial Services

c.c. Ashley Crozier, Crozier Consultants Inc.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the Act);

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(4) of the Act consenting to a payment out of the Pension Agreement between Honeywell Limited - Honeywell Ltee National Auto, Aero and Agri. Implement Workers Union, Registration Number 0258426.

TO: **Honeywell Limited**
3333 Unity Drive
Mississauga ON L5L 3S6

Attention: Barb Moreau
Senior Pension Analyst
Canadian Business Services

CONSENT

On or about January 21, 2005, the Superintendent of Financial Services caused to be served on Honeywell Limited a Notice of Proposal dated January 21, 2005 to consent, pursuant to subsection 78(4) of the Act, to payment out of the Pension Agreement between Honeywell Limited - Honeywell Ltee National Auto, Aero and Agri. Implement Workers Union, Registration No. 0258426, to Honeywell Limited in the amount of $1,250,000 as at January 21, 2004 plus interest, at the fund rate of return thereon, to the date of payment.

No Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the Act.

THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS to the payment out of the Pension Agreement between Honeywell Limited - Honeywell Ltee National Auto, Aero and Agri. Implement Workers Union, Registration No. 0258426, to Honeywell Limited in the amount of $1,250,000 as at January 21, 2004 plus interest, at the fund rate of return thereon, to the date of payment.

DATED at Toronto, Ontario, this 21st day of January, 2005

Tom Golfetto,
Director, Pension Plans Branch
by Delegated Authority from
the Superintendent of Financial Services

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c.P.8, as amended (the *"Act"*);

AND IN THE MATTER OF an Application by Gardena Canada Ltd. dated for the Consent of the Superintendent of Financial Services under subsection 78(1) of the Act to withdraw surplus from the Melnor Canada Ltd. Retirement Income Plan, Registration # 449777;

TO: **Gardena Canada Ltd.**
100 Summerlea Road
Brampton, ON L6T 4X3

Attention: Jay Sterling
President
Applicant and Administrator

CONSENT

On or about December 19, 2003, the Superintendent of Financial Services (the "Superintendent") caused to be served on Gardena Canada Ltd. ("Gardena") a Notice of Proposal dated December 19, 2003, proposing to refuse to consent to a surplus withdrawal application dated March 13, 2002 filed by Gardena.

On or about January 19, 2004, Gardena requested a hearing by the Financial Services Tribunal (the "Tribunal").

On or about May 6, 2004, the Tribunal conducted a pre-hearing conference. Full party status was granted to ten members of the Plan (the "Ten Members") who were all represented by the same solicitor.

On or about July 29, 2004, the Tribunal conducted a settlement conference. The parties entered into a settlement and signed Minutes of Settlement on July 29, 2004 which provided that legal fees would be paid from the surplus in the Plan in the amount of $35,000 to Gardena and $35,000 to the Ten Members, and that any fees incurred or to be incurred by the Williamson Group would also be paid from the surplus in the plan. The Minutes of Settlement further provided that the remaining surplus would be divided between the members and former members of the Plan (who would receive 60% of the remaining surplus) and Gardena (who would receive 40% of the remaining surplus). Gardena was to file a supplementary surplus withdrawal application with consents of the affected members and former members, and the Superintendent was to issue a consent to the supplementary surplus withdrawal application upon its receipt.

On or about November 4, 2004, Gardena filed the supplementary surplus withdrawal application in accordance with the Minutes of Settlement dated July 29, 2004.

The application appears to comply with section 78 and subsection 79(3)(a) & (b) of the *Act* and with clause 8(1)(b) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.

THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE WITHDRAWS the Notice of Proposal dated December 19, 2003.

THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS to the payment out of the Melnor Canada Ltd. Retirement Income Plan, Registration Number 449777, to Gardena Canada Ltd. in the amount of $186,534.

THIS CONSENT IS EFFECTIVE ONLY AFTER Gardena satisfies me that all benefits, benefit enhancements (including benefits and benefit enhancements relating to the Surplus Distribution Agreement between Gardena and the members, former members, and any other persons entitled to payments from the Plan's fund) and any other payments to which the members, former members, and any other persons entitled to such payments have been paid, purchased, or otherwise provided for.

DATED at Toronto, Ontario, this 27th day of January, 2005.

K. David Gordon
Deputy Director, Pensions

cc: Clifton P. Prophet
Gowling Lafleur Henderson LLP
Barristers & Solicitors
Suite 4900, Commerce Court West
Toronto, Ontario
M5L 1J3

Solicitor for Gardena Canada Ltd.

David Hager
Lang Michener LLP
Barristers & Solicitors
BCE Place, 181 Bay Street, Suite 2500
P.O. Box 747
Toronto, Ontario M5J 2T7

Solicitor for the Ten Members

Declarations

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c.P. 8, as amended by the *Financial Services Commission of Ontario Act, 1997*, R.S.O. 1997, c. 28; (the *"Act"*);

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make a Declaration under Section 83 of the Act respecting the **Commercial Aluminum (1993) Limited Hourly Employees Pension Plan, Registration Number 1010289**; (the **"Pension Plan"**);

TO: **Thompson Actuarial Limited**
87 Wolverleigh Blvd.
Toronto ON M4J 1R8

Attention: Andre Choquet, FCIA, FSA
Actuary
Administrator of the Pension Plan

AND TO: **Commercial Aluminum Limited**
240 Barton Road
Weston ON M9M 2W6

Attention: Suzanne Lam-Fitzgibbon
Employer

AND TO: **SF Partners Inc. (formerly Solursh Feldman Goldberg Inc.)**
The Madison Centre
4950 Yonge Street, Suite 400
Toronto ON M2N 6K1

Attention: Brahm Rosen
Senior Vice President
Trustee in Bankruptcy for Commercial Aluminum (1993) Limited

AND TO: **United Steelworkers of America**
115 Albert Street
P.O. Box 946
Oshawa ON L1H 7N1

Attention: Wess Dowsett
Staff Representative
Union

DECLARATION

WHEREAS:

1. The Commercial Aluminum (1993) Limited Hourly Employees Pension Plan, Registration Number 1010289 (the "Pension Plan"), is registered under the *Act*; and
2. The Pension Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the Act or the regulations made thereunder; and
3. The Pension Plan was wound up in full effective December 31, 2001; and
4. The Superintendent of Financial Services appointed Thompson Actuarial Limited as the administrator (the "Administrator") of the Pension Plan on October 4, 2002 ; and
5. No notice requiring a hearing by the Financial Services Tribunal, pursuant to subsection 89 (6) of the Act, has been received.

NOW THEREFORE TAKE NOTICE I declare pursuant to sections 83 and 89 of the Act that the Guarantee Fund applies to the Pension Plan for the following reasons:

1. The Wind-Up Valuation Report filed by the Administrator indicates an estimated funding deficiency of $94,825 as at December 31, 2001 and an estimated claim against the Guarantee Fund as at December 31, 2001 of $78,525.
2. SF Partners Inc. was appointed Trustee in Bankruptcy for Commercial Aluminum (1993) Limited on January 30, 2002.
3. The Administrator has advised that they have filed a Proof of Claim on behalf of the Pension Plan, with the Trustee in Bankruptcy but was advised by the Trustee in Bankruptcy that they are no funds are available for distribution to the Pension Plan.
4. The Administrator has advised that they are reasonable and probable grounds for considering that the funding requirements of the Act and Regulation cannot be satisfied.

DATED at North York, Ontario, this 17th day of December, 20, 2004.

Tom Golfetto
Director, Pension Plans Branch by Delegated Authority from the Superintendent of Financial Services

IN THE MATTER OF the *Pension Benefits Act, R.S.O. 1990, c.P. 8, as amended by the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28, (the "Act");*

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make a Declaration under Section 83 of the Act respecting the **Pension Plan for Hourly Employees of Canadian Tack and Nail Ltd., Registration Number 0241968;**

TO: **Morneau Sobeco**
5915 Don Mills Road, Suite 700
One Morneau Sobeco Centre
Toronto ON M2C 1W3

Attention: David Kearney
Senior Consultant
Administrator of the Pension Plan

AND TO: **Canadian Tack and Nail Ltd.**
471 Dundas Street
P.O. Box 754
Cambridge ON N3H 3W6

Attention: Gary Ayers
Vice President & General Manager
Employer

AND TO: **KPMG Inc.**
20 Erb Street West
Marsland Centre, 3rd Floor
Waterloo ON N2L 1T2

Attention: Robert J. Bradley
Senior Manager
Trustee in Bankruptcy for Canadian Tack and Nail Ltd.

DECLARATION

WHEREAS:

1. *The Pension Plan for Pension Plan for Hourly Employees of Canadian Tack and Nail Ltd., Registration Number 0241968 (the "Pension Plan"), is registered under the Act; and*
2. The Pension Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the Act or the regulations made thereunder; and
3. The Deputy Superintendent, Pensions, has issued a Notice of Proposal dated September 15, 2004, to order the wind up of the Pension Plan in full for those members who ceased to be employed effective between March 31, 2005 and April 1, 2005, pursuant to section 69 of the Act; and
4. The Superintendent of Financial Services appointed Morneau Sobeco as the administrator (the "Administrator") of the Pension Plan on June 9, 2003 and
5. On October 6, 2004, the Deputy Superintendent, Pensions issued a Notice of Proposal of his intent to make a Declaration that the Guarantee Fund applies to the Pension Plan; and
6. No notice requiring a hearing by the Financial Services Tribunal, pursuant to subsection 89 (6) of the Act, has been received.

NOW THEREFORE TAKE NOTICE I declare pursuant to sections 83 and 89 of the Act that the Guarantee Fund applies to the Pension Plan for the following reasons:

1. The most-recent actuarial valuation report on the Pension Plan was prepared as at December 31, 2000 by Towers Perrin Limited. That report showed a solvency excess of $64,900 as at December 31, 2000. The administrator had the actuary prepare a preliminary valuation of the Pension Plan as at April 1, 2003. The result of that review determined that the wind up estimated funded ratio had deteriorated to approximately 22% and that the Pension Plan now has a wind up deficit of $118,200 as at April 1, 2003.
2. KPMG was appointed Trustee in Bankruptcy for Canadian Tack and Nail Ltd. on April 1, 2003.
3. The Administrator has advised that they have filed a Proof of Claim on behalf of the Pension Plan with the Trustee in Bankruptcy but was advised by the Trustee in Bankruptcy that there are no funds are available for distribution to the Pension Plan.
4. The Administrator has advised that there are reasonable and probable grounds for considering that the funding requirements of the Act and Regulation cannot be satisfied.

DATED at North York, Ontario this 20th day of December, 2004.

Tom Golfetto
Director, Pension Plans Branch by Delegated Authority from the Superintendent of Financial Services

IN THE MATTER OF the *Pension Benefits Act, R.S.O. 1990, c.P.8, as amended by the Financial Services Commission of Ontario Act, 1997, R.S.O. 1997, c. 28, (the "Act");*

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make a Declaration under section 83 of the Act respecting the **Pension Plan for Salaried Employees of Canadian Tack and Nail Ltd., Registration Number 0581306 (the "Pension Plan");**

TO: **Morneau Sobeco**
885 Don Mills Road, Suite 700
One Morneau Sobeco Centre
Toronto ON M3C 1W3

Attention: David Kearney
Senior Consultant
Administrator of the Pension Plan

AND TO: **Canadian Tack and Nail Ltd.**
431 Dundas Street
P.O. Box 754
Cambridge ON N1R 5W6

Attention: Gary Ayers
Vice President & General Manager
Employer

AND TO: **KPMG Inc.**
20 Erb Street West
Marsland Centre, 3rd Floor
Waterloo ON N2L 1T2

Attention: **Robert J. Bradley**
Senior Manager
Trustee in Bankruptcy for Canadian Tack and Nail Ltd.

DECLARATION

WHEREAS:

1. *The Pension Plan for Pension Plan for Salaried Employees of Canadian Tack and Nail Ltd., Registration Number 0581306, (the "Pension Plan") is registered under the Pension Benefits Act, R.S.O. 1990, c. P. 8 as amended by the Financial Services Commission of Ontario Act, 1997, c. 28, (the "Act"); and*
2. The Pension Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the Act or the regulations made thereunder; and
3. The Deputy Superintendent, Pensions, has issued a Notice of Proposal dated September 3, 2004, to order the wind up of the Pension Plan in full for those members who ceased to be employed effective between March 20, 2003 and April 1, 2003 pursuant to section 69 of the Act; and
4. The Superintendent of Financial Services appointed Morneau Sobeco as the administrator (the "Administrator") of the Pension Plan on June 9, 2003; and
5. On October 6, 2004, the Deputy Superintendent, Pensions issued a Notice of Proposal dated October 6, 2004, of his intent to make a Declaration that the Guarantee Fund applies to the Pension Plan, and
6. No notice requiring a hearing by the Financial Services Tribunal, pursuant to subsection 89 (6) of the Act, has been received.

NOW THEREFORE TAKE NOTICE *I declare pursuant to sections 85 and 89 of the Act that the Guarantee Fund applies to the Pension Plan for the following reasons:*

1. *The most recent actuarial valuation report on the Pension Plan was prepared as of December 31, 1999 by Wright Mogg & Associates Ltd. That report showed a wind up deficiency of $63,000 as at December 31, 2001. The administrator had its actuary prepare a preliminary valuation of the Pension Plan as at April 1, 2003. The result of that review determined that the wind up deficiency had deteriorated to approximately $328,000 and an estimated funded ratio of 14% as at April 1, 2003.*
2. KPMG was appointed Trustee in Bankruptcy for Canadian Tack and Nail Ltd. on April 1, 2003.
3. The Administrator has advised that they have filed a Proof of Claim with the Trustee in Bankruptcy in the amount of $868,756 but was advised by the Trustee in Bankruptcy that there are no funds are available for distribution to the Pension Plan.
4. The Administrator has advised that there are reasonable and probable grounds for considering that the funding requirements of the Act and Regulation cannot be satisfied.

DATED at North York, Ontario this 23rd day of December, 2004.

Tom Golfetto
Director, Pension Plans Branch
by Delegated Authority from
the Superintendent of Financial Services

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c.P. 8, as amended by the *Financial Services Commission of Ontario Act, 1997*, R.S.O. 1997, c. 28; (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make a Declaration under Section 83 of the Act respecting the **Fantom Technologies Inc. Salaried Employees Retirement Income Plan - Part A and Part B, Registration Number 0910810** (the "**Pension Plan**");

TO: Morneau Sobeco
895 Don Mills Road, Suite 700
One Morneau Sobeco Centre
Toronto ON M2C 1W3

Attention: David Kearney
Senior Consultant
Administrator of the Pension Plan

AND TO: Fantom Technologies Inc.
PO Box 1004
Welland ON L3B 5S1

Attention: Norm Wotherspoon
Treasurer
Employer

AND TO: PricewaterhouseCoopers Inc.
145 King Street West
Toronto ON M5H 1V8

Attention: Catherine Hristow
Vice President
Interim Receiver and Trustee in Bankruptcy for Fantom Technologies Inc.

DECLARATION

WHEREAS:

1. Fantom Technologies Inc. Salaried Employees Retirement Income Plan - Part A and Part B, Registration Number 0910810, is registered under the Act; and
2. The Pension Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the Act or the regulations made thereunder; and
3. The Pension Plan was wound up in full for those members who ceased to be employed effective between October 12, 2001 and March 22, 2002; and
4. The Superintendent of Financial Services initially appointed Deloitte & Touche Inc. as the administrator (the "Administrator") of the Pension Plan on April 25, 2002 and on July 11, 2002, appointed Morneau Sobeco as Administrator to replace Deloitte & Touche; and
5. On September 16, 2004, the Deputy Superintendent, Pensions issued a Notice of Proposal dated September 15, 2004, of his intent to make a Declaration that the Guarantee Fund applies to the Pension Plan, and
6. No notice requiring a hearing by the Financial Services Tribunal, pursuant to subsection 89 (6) of the Act, has been received.

NOW THEREFORE TAKE NOTICE I declare pursuant to sections 83 and 89 of the Act that the Guarantee Fund applies to the Pension Plan for the following reasons:

1. The most recent actuarial valuation performed as at December 31, 2000,

had a solvency deficiency of $784,300 and a transfer ratio of 63%. Further, the Administrator had its actuary performed a preliminary valuation as at March 22, 2002, and the results of that review determined that the wind up funded ratio had deteriorated from 63% as at December 31, 2000 to approximately 48% as at March 22, 2002, and that the wind up deficit had increased to $1,228,200 from $784,300.

2. On October 25, 2001, Fantom Technologies Inc.'s request to obtain creditor protection for a temporary period under the *Companies' Creditors Arrangement Act* ("CCAA") was approved by an Order of the Ontario Superior Court of Justice. The Court appointed PricewaterhouseCoopers Inc. as the Monitor, as required under the CCAA proceedings and also appointed PricewaterhouseCoopers Inc. as Interim Receiver of the Fantom Technologies Inc.
3. On March 22, 2002, the Court issued an Order terminating the CCAA proceedings and discharged PricewaterhouseCoopers Inc. as Monitor but directed it to continue in its role as Interim Receiver. On the same day, PricewaterhouseCoopers Inc. was appointed Trustee in Bankruptcy.
4. The Administrator has filed a proof of claim in respect of the estimated $1,025,302, deficit with the Trustee in Bankruptcy. The Administrator advises that the Trustee in Bankruptcy has not completed their administration of the bankruptcy but have advised them that it is unlikely there will be any proceeds from the bankrupt estate of Fantom Technologies Inc. to make payments to the Pension Plan.
5. The Administrator has advised that there are reasonable and probable grounds for considering that the funding requirements of the Act and Regulation cannot be satisfied.

DATED at North York, Ontario this 23rd day of December, 2004.

Tom Golfetto
Director, Pension Plans Branch by Delegated Authority from the Superintendent of Financial Services

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P. 8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make a Declaration under section 83 of the Act relating to the **Pension Plan for the Hourly Employees of Magnetek Polygon Transformer Co., a division of Magnetek National Electric Coil Limited, Registration Number 996942** (the "Plan").

TO: **Aon Consulting**
Suite 500
145 Wellington Street West
Toronto ON M5J 1H8

Attention: Mr. Frank Lee, FSA, FCIA
Administrator

AND TO: **National Electric Coil**
50 Northline Road
North York ON M4B 3E2

Attention: Mr. Jim Gray, General Manager
Employer

AND TO: **Canadian Union of Operating Engineers & General Workers**
2087 Dundas Street East, Unit 103
Mississauga ON L4X 2V7

Attention: Mr. Grgar Zoran
Union Representative

AND TO: **Doane Raymond Limited**
PO Box 55
Royal Bank Plaza, Suite 1100,
North Tower
Toronto ON M5J 2P9

Attention: **Mr. Ray Godbold**
Trustee in Bankruptcy of
Polygon Transformer Inc.

DECLARATION

WHEREAS:

1. The Pension Plan for the Hourly Employees of Magnetek Polygon Transformer Co., a division of Magnetek National Electric Coil Limited (the "Plan") is registered under the Act as Registration Number 996942; and
2. The Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the Act or the regulations made thereunder; and
3. On January 1, 1994 the Company ceased contributing to the Plan; and
4. Magnetek Polygon Transformer Co. and its successor company, Polygon Transformer Inc., no longer exist, the latter entering into bankruptcy in April 1995; and
5. The Superintendent of Financial Services appointed MLH&A (now Aon Consulting Inc.) administrator of the Plan on October 20, 1995; and
6. On January 20, 2003 the Director, Pension Plans Branch, issued an order that the Plan be wound up effective December 31, 1993; and
7. On October 13, 2004 the administrator filed a wind up report for the Plan together with an application for a Declaration that the Guarantee Fund applies to the Plan; and
8. The administrator's preliminary estimate of the deficit in the Plan as at December 31, 1993 is $24,149 with a wind up funded ratio of 64.14%, and an estimated claim

against the Guarantee Fund of $14,160; and

9. The administrator's estimate of the claim against the Guarantee Fund as at December 31, 2003 is $81,945;
10. On December 20, 2004 the Deputy Superintendent, Pensions, issued a notice of proposal to make a declaration that the Guarantee Fund applies to the Plan; and
11. As of February 7, 2005 no request for a hearing before the Financial Services Tribunal has been received in respect of the notice of proposal;

NOW THEREFORE TAKE NOTICE I declare pursuant to sections 83 and 89 of the Act that the Guarantee Fund applies to the Plan for the following reasons:

REASONS FOR THE PROPOSED DECLARATION:

1. Magnetek Polygon Transformer Co. no longer exists.
2. The administrator has estimated the wind up funded ratio of the Plan to be 64.14%.
3. The estimated claim against the Guarantee Fund as at the wind up date is $14,160, increasing to an estimated $81,945 when projected forward to December 31, 2003.
4. There are reasonable and probable grounds for concluding that the funding requirements of the Act and regulation cannot be satisfied.

DATED at North York, Ontario this 9th day of February, 2005.

Tom Golfetto
Director, Pension Plans Branch

Allocations

IN THE MATTER OF the *Pension Benefits Act*. R.S.O. 1990, c. P. 8, as amended by (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make a Declaration under Section 83 of the Act, respecting the **Royal Oak Mines Inc. Pension Plan for Timmins Salaried Employees (the "Pension Plan") Registration Number 0937458;**

TO: Morneau Sobeco
895 Don Mills Road, Suite 700
One Morneau Sobeco Centre
Toronto ON M3C 1W3

Attention: Pauline Frenette
Associate Consultant
Administrator of the Pension Plan

ALLOCATION

WHEREAS on August 28, 2001, the Director, Pension Plans Branch declared, pursuant to sections 83 and 89 of the Act, that the Pension Benefits Guarantee Fund (the "Guarantee Fund") applies to the Pension Plan;

NOW THEREFORE I shall allocate from the Guarantee Fund and pay to the Pension Plan, pursuant to subsection 34(7) of R.R.O. 1990, Reg. 909, under the Act (the "Regulation"), an amount not to exceed $1,698,800 which together with the Ontario assets of the Pension Plan, will provide for the benefits determined in accordance with section 34 of the Regulation. Any money allocated from the Guarantee Fund but not required to provide such benefits shall be returned to the Guarantee Fund.

DATED at Toronto, Ontario, this 30th day of November, 2004

K. David Gordon
Deputy Superintendent, Pensions

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P. 8, as amended by (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make a Declaration under Section 83 of the Act, respecting the **Royal Oak Mines Inc. Pension Plan for Timmins Hourly Employees (the "Pension Plan") Registration Number 0937466;**

TO: Morneau Sobeco
895 Don Mills Road, Suite 700
One Morneau Sobeco Centre
Toronto ON M3C 1W3

Attention: Pauline Frenette
Associate Consultant
Administrator of the Pension Plan

ALLOCATION

WHEREAS on August 28, 2001, the Director, Pension Plans Branch declared, pursuant to sections 83 and 89 of the Act, that the Pension Benefits Guarantee Fund (the "Guarantee Fund") applies to the Pension Plan;

NOW THEREFORE I shall allocate from the Guarantee Fund and pay to the Pension Plan, pursuant to subsection 34(7) of R.R.O. 1990, Reg. 909, under the Act (the "Regulation"), an amount not to exceed $2,617,900 which together with the Ontario assets of the Pension Plan, will provide for the benefits determined in accordance with section 34 of the Regulation. Any money allocated from the Guarantee Fund but not required to provide such benefits shall be returned to the Guarantee Fund.

DATED at Toronto, Ontario, this 30th day of November, 2004

K. David Gordon
Deputy Superintendent, Pensions

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended, (the "Act");

AND IN THE MATTER OF a Declaration by the Superintendent of Financial Services under Section 83 of the Act, respecting the **Pension Plan for Employees of Port Colborne Iron Works, Limited Who Are Members Of The Bargaining Unit Represented By The United Steel Workers of America, Registration Number 289439** (the "Plan");

TO: PricewaterhouseCoopers Inc.
Royal Trust Tower, Suite 3000
PO Box 82, Toronto Dominion Centre
Toronto ON M5K 1G8

Attention: Mr. Tony Karkheck
Appointed Administrator

AND TO: Port Colborne Iron Works Limited
PO Box 66
Port Colborne ON L3K 5V7

Attention: Edward B. Magee Jr.
President
Employer

AND TO: BDO Dunwoody Limited
37 Dorothy Street
Welland ON L3B 3V6

Attention: Mr. David Ponting, Partner
Trustee in Bankruptcy

AND TO: United Steelworkers of America
2601 Hwy 20 East, Unit 7
Fonthill ON L0S 1E6

Attention: Mr. Brian Adamczyk
Union representative for the members of the Plan

ALLOCATION

WHEREAS on the 21st day of May, 2004 a declaration was made, pursuant to sections 83 and 89 of the *Act*, that the Pension Benefits Guarantee Fund (the "Guarantee Fund") applies to the Plan;

NOW THEREFORE I shall allocate from the Guarantee Fund and pay to the Plan, pursuant to subsection 34(7) of R.R.O. 1990, Reg. 909, under the Act (the "Regulation"), an amount not to exceed $467,807 that is expected to provide, together with the Ontario assets of the Plan, for the benefits determined in accordance with section 34 of the Regulation, and to pay the reasonable administration costs to wind up the Plan. Any money allocated from the Guarantee Fund but not required to provide such benefits or costs shall be returned to the Guarantee Fund.

DATED at North York, Ontario, this 10th day of December, 2004.

K. David Gordon
Deputy Superintendent, Pensions

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the *"Act"*);

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make a Declaration under section 83 of the *Act* relating to the **Employees' Retirement Plan of Hoskins Alloys of Canada Limited, Registration Number 557868** (the "Plan").

TO: PricewaterhouseCoopers Inc.
1 Robert Speck Parkway
Suite 1100, Mississauga ON
L4Z 3M3

Attention: Mr. Tony Karkheck
Human Resource Services
Appointed Administrator

AND TO: Hoskins Manufacturing Co.
39500 High Pointe Boulevard,
Suite 300
Novi MI 48375

Attention: Phillip Varvatos
Controller
Employer

ALLOCATION

WHEREAS on the 12th day of October, 2004 a declaration was made, pursuant to sections 83 and 89 of the *Act*, that the Pension Benefits Guarantee Fund (the "Guarantee Fund") applies to the Plan;

NOW THEREFORE I shall allocate from the Guarantee Fund and pay to the Plan, pursuant to subsection 34(7) of R.R.O. 1990, Reg. 909, under the Act (the "Regulation"), an amount not to exceed $306,700 that is expected to provide, together with the Ontario assets of the Plan, for the benefits determined in accordance with section 34 of the Regulation, and to pay the reasonable administration costs to wind up the Plan. Any money allocated from the Guarantee Fund but not required to provide such benefits or costs shall be returned to the Guarantee Fund.

DATED at North York, Ontario, this 20th day of December, 2004.

K. David Gordon
Deputy Superintendent, Pensions

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P. 8, as amended by the *Financial Services Commission of Ontario Act, 1997*, R.S.O. 1997, c. 28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make a Declaration under Section 83 of the Act, respecting the **Pension Plan for Hourly Employees of Maksteel Hamilton - Division of Maksteel Inc., Registration Number 1059146 (the "Pension Plan");**

TO: Morneau Sobeco
895 Don Mills Road, Suite 700
One Morneau Sobeco Centre
Toronto ON M3C 1W3

Attention: Pauline Frenette
Associate Consultant
Administrator of the Pension Plan

INTERIM ALLOCATION

WHEREAS on October 27, 2004, the Director, Pension Plans Branch declared, pursuant to sections 83 and 89 of the Act, that the Pension Benefits Guarantee Fund (the "Guarantee Fund") applies to the Pension Plan;

NOW THEREFORE I shall allocate from the Guarantee Fund and pay to the Pension Plan, pursuant to subsection 34(7) of R.R.O. 1990, Reg. 909, under the Act (the "Regulation"), an amount not to exceed $769,600 (Interim Allocation) which together with a final Allocation and the Ontario assets of the Pension Plan, is estimated to provide for the benefits determined in accordance with section 34 of the Regulation. Any money allocated from the Guarantee Fund but not required to provide such benefits shall be returned to the Guarantee Fund.

DATED at Toronto, Ontario, this 20th day of December, 2004

K. David Gordon
Deputy Superintendent, Pensions

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, R.S.O. 1997, c. 28; (the "Act");

AND IN THE MATTER OF a Declaration by the Superintendent of Financial Services under Section 83 of the Act, respecting the **Superior Machine and Tool (Chatham) Limited Retirement Plan for Salaried Employees, Registration Number 0691642,** (the "Plan");

TO: Morneau Sobeco
895 Don Mills Road, Suite 700
One Morneau Sobeco Centre
Toronto ON M3C 1W3

Attention: Mr. David R. Kearney,
Senior Consultant
Appointed Administrator of the Plan

AND TO: Zwaig Consulting Inc.
Suite 1560, Exchange Tower
P.O. Box 17, 130 King Street West
Toronto ON M5X 1J5

Attention: Mr. Jeffrey D. Kerbel
Trustee in Bankruptcy and Interim Receiver and Manager

ALLOCATION

WHEREAS on the 15th day of January, 2002 a declaration was made, pursuant to sections 83 and 89 of the Act, that the Pension Benefits Guarantee Fund (the "Guarantee Fund") applies to the Plan;

NOW THEREFORE I shall allocate from the Guarantee Fund and pay to the Plan, pursuant to subsection 34(7) of R.R.O. 1990, Reg. 909, under the Act (the "Regulation"), an amount not to exceed $2,139,984.00 that is expected to provide, together with the Ontario assets of the Plan, for the benefits determined in accordance with section 34 of the Regulation, and to pay the reasonable administration costs to wind up the Plan. Any money allocated from the Guarantee Fund but not required to provide such benefits or costs shall be returned to the Guarantee Fund.

DATED at North York, Ontario, this 22nd day of December, 2004.

K. David Gordon
Deputy Superintendent, Pensions

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P. 8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the "Act");

AND IN THE MATTER OF a Declaration by the Superintendent of Financial Services under Section 83 of the Act, respecting the **Frost Fence Inc. Bargaining Unit Pension Plan for Members of United Steelworkers of America, Registration Number 697441** (the "Plan").

TO: The Standard Life Assurance Company
1245 Sherbrooke Street West
Montreal, Quebec H3G 1G3

Attention: Marc Vigneault, FCIA, FSA
Actuary
Appointed Administrator

AND TO: Frost Fence Inc.
250 Lottridge Street
Hamilton ON L8L 8J8

Attention: Mr. Neil Clark,
Chief Operations Officer
Employer

AND TO: United Steelworkers of America
1031 Barton Street East
Room 113
Hamilton ON L8L 3E3

Attention: Mr. Ron Wyatt,
Staff Representative, Local 3561
Union representing the members of the Plan

AND TO: Paul M. Casey & Associates, Ltd.
c/o Kroll Restructuring Ltd.
One Financial Place
One Adelaide Street East,
30th floor
Toronto ON M5C 2V9

Attention: Mr. Adam Bryk
Trustee in Bankruptcy

ALLOCATION

WHEREAS on the 19th day of September, 2003 a declaration was made, pursuant to sections 83 and 89 of the Act, that the Pension Benefits Guarantee Fund (the "Guarantee Fund") applies to the Plan;

NOW THEREFORE I shall allocate from the Guarantee Fund and pay to the Plan, pursuant to subsection 34(7) of R.R.O. 1990, Reg. 909, under the Act (the "Regulation"), an amount not to exceed $5,874,000 that is expected to provide, together with the Ontario assets of the Plan, for the benefits determined in accordance with section 34 of the Regulation, and to pay the reasonable administration costs to wind up the Plan. Any money allocated from the Guarantee Fund but not required to provide such benefits or costs shall be returned to the Guarantee Fund.

DATED at North York, Ontario, this 9th day of February, 2005.

K. David Gordon
Deputy Superintendent, Pensions

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P. 8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the "Act");

AND IN THE MATTER OF a Declaration by the Superintendent of Financial Services under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act, 1997*, S. O. 1997, c. 28, respecting the **Pension Plan for Employees of Mimik Industries Inc., Registration Number 287490;**

TO: Mimik Industries Inc.
131 Sheldon Drive, Units 12 - 13
Cambridge ON N1R 6S2

Attention: Mr. Robert N. Fraser
Employer

Cowan Wright Limited
100 Regina Street South,
Suite 270, P.O. Box 96
Waterloo ON N2J 3Z8

Attention: Mr. Timothy Lawrence,
F.S.A., F.C.I.A., Principal
Administrator

ALLOCATION

WHEREAS on the 14th day of October, 2004 a declaration was made, pursuant to sections 83 and 89 of the Act, that the Pension Benefits Guarantee Fund (the "Guarantee Fund") applies to the Pension Plan for Employees of Mimik Industries Inc., Registration Number 287490, (the "Plan");

NOW THEREFORE I shall allocate from the Guarantee Fund and pay to the Plan, pursuant to subsection 34(7) of R.R.O. 1990, Reg. 909, under the Act (the "Regulation"), an amount not to exceed $442,160.00, determined as of November 30, 2004, to provide, together with the Ontario assets of the Plan, for the benefits determined in accordance with section 34 of the Regulation, and to pay the reasonable administration costs to wind up the Plan. Any money allocated from the Guarantee Fund but not required to provide such benefits or costs shall be returned to the Guarantee Fund.

DATED at North York, Ontario this 9th day of February, 2005.

K. David Gordon
Deputy Superintendent, Pensions

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P. 8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the "Act");

AND IN THE MATTER OF a Declaration by the Superintendent of Financial Services under Section 83 of the Act, respecting the **Retirement Plan for Employees of Peterborough Paper Converters Inc., Registration Number 283358** (the "Plan").

TO: Morneau Sobeco
895 Don Mills Road, Suite 700
One Morneau Sobeco Centre
Montreal, Toronto ON
M3C 1W3

Attention: Mr. David R. Kearney
Senior Consultant
Administrator of the Plan

AND TO: Peterborough Paper Converters Inc.
550 Braidwood Avenue
Peterborough ON K9J 1W1

Attention: Mr. Blair Nixon,
Vice-President Finance
Employer

AND TO: PricewaterhouseCoopers Inc.
55 King Street West, Suite 900
Kitchener ON N2G 4W1

Attention: Mr. Aldis Makovskis,
Senior Vice-President
Trustee in Bankruptcy

AND TO: Sack Goldblatt Mitchell
20 Dundas Street West,
Suite 1130, PO Box 180
Toronto ON M5G 2G8

Attention : Mr. Michael Kainer
Counsel for Graphic Communications International Union Local 100-M representing the bargaining unit members of the Plan

ALLOCATION

WHEREAS on the 9th day of March, 2004 a declaration was made, pursuant to sections 83 and 89 of the Act, that the Pension Benefits Guarantee Fund (the "Guarantee Fund") applies to the Plan;

NOW THEREFORE I shall allocate from the Guarantee Fund and pay to the Plan, pursuant to subsection 34(7) of R.R.O. 1990, Reg. 909, under the Act (the "Regulation"), an amount not to exceed $3,894,100 that is expected to provide, together with the Ontario assets of the Plan, for the benefits determined in accordance with section 34 of the Regulation, and to pay the reasonable administration costs to wind up the Plan. Any money allocated from the Guarantee Fund but not required to provide such benefits or costs shall be returned to the Guarantee Fund.

DATED at North York, Ontario, this 9th day of February, 2005.

K. David Gordon
Deputy Superintendent, Pensions

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P. 8, as amended by the *Financial Services Commission of Ontario Act, 1997*, R.S.O. 1997, c. 28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make a Declaration under Section 83 of the Act, respecting the **Pension Plan for Salaried Employees of Canadian Tack and Nail Ltd., Registration Number 0581306 (the "Pension Plan");**

TO: Morneau Sobeco
895 Don Mills Road, Suite 700
One Morneau Sobeco Centre
Toronto ON M2C 1W3

Attention: David Kearney
Principal
Administrator of the Pension Plan

INTERIM ALLOCATION

WHEREAS on December 23, 2004, the Director, Pension Plans Branch declared, pursuant to sections 83 and 89 of the Act, that the Pension Benefits Guarantee Fund (the "Guarantee Fund") applies to the Pension Plan;

NOW THEREFORE I shall allocate from the Guarantee Fund and pay to the Pension Plan, pursuant to subsection 34(7) of R.R.O. 1990, Reg. 909, under the Act (the "Regulation"), an amount not to exceed $410,000 (Interim Allocation) which together with a final Allocation, if any, and the Ontario assets of the Pension Plan, is estimated to provide for the benefits determined in accordance with section 34 of the Regulation. Any money allocated from the Guarantee Fund but not required to provide such benefits shall be returned to the Guarantee Fund.

DATED at Toronto, Ontario, this 14th day of February, 2005

K. David Gordon
Deputy Superintendent, Pensions

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P. 8, as amended by the *Financial Services Commission of Ontario Act, 1997*, R.S.O. 1997, c. 28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make a Declaration under Section 83 of the Act, respecting the **Pension Plan for Hourly Employees of Cold Metal Products Limited, Registration Number 0975045 (the "Pension Plan");**

TO: PricewaterhouseCoopers Inc.
Mississauga Executive Centre
One Robert Speck Parkway
Mississauga ON 3M3

Attention: Tony Karkheck
Senior Vice-President
Administrator of the Pension Plan

INTERIM ALLOCATION

WHEREAS on July 14, 2004, the Director, Pension Plans Branch declared, pursuant to sections 83 and 89 of the Act, that the Pension Benefits Guarantee Fund (the "Guarantee Fund") applies to the Pension Plan;

NOW THEREFORE I shall allocate from the Guarantee Fund and pay to the Pension Plan, pursuant to subsection 34(7) of R.R.O. 1990, Reg. 909, under the Act (the "Regulation"), an amount not to exceed $4,272,454 (Interim Allocation) which together with a final Allocation and the Ontario assets of the Pension Plan, is estimated to provide for the benefits determined in accordance with section 34 of the Regulation. Any money allocated from the Guarantee Fund but not required to provide such benefits shall be returned to the Guarantee Fund.

DATED at Toronto, Ontario, this 14th day of February, 2005

K. David Gordon
Deputy Superintendent, Pensions

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P. 8, as amended by the *Financial Services Commission of Ontario Act, 1997*, R.S.O. 1997, c. 28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make a Declaration under Section 83 of the Act, respecting the **Pension Plan for Hourly Employees of Fantom Technologies Inc., Registration Number 0348995 (the "Pension Plan");**

TO: Morneau Sobeco
895 Don Mills Road, Suite 700
One Morneau Sobeco Centre
Toronto ON M2C 1W3

Attention: David Kearney
Principal
Administrator of the Pension Plan

INTERIM ALLOCATION

WHEREAS on October 22, 2004, the Director, Pension Plans Branch declared, pursuant to sections 83 and 89 of the Act, that the Pension Benefits Guarantee Fund (the "Guarantee Fund") applies to the Pension Plan;

NOW THEREFORE I shall allocate from the Guarantee Fund and pay to the Pension Plan, pursuant to subsection 34(7) of R.R.O. 1990, Reg. 909, under the Act (the "Regulation"), an amount not to exceed $3,549,200 (Interim Allocation) which together with a final Allocation, if any, and the Ontario assets of the Pension Plan, is estimated to provide for the benefits determined in accordance with section 34 of the Regulation. Any money allocated from the Guarantee Fund but not required to provide such benefits shall be returned to the Guarantee Fund.

DATED at Toronto, Ontario, this 14th day of February, 2005

K. David Gordon
Deputy Superintendent, Pensions

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P. 8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the "Act");

AND IN THE MATTER OF a Declaration by the Superintendent of Financial Services under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act, 1997*, S. O. 1997, c. 28, respecting the **Forest City International Trucks Ltd. Non-Contributory Retirement Plan (for Non-Managerial Employees of U.A.W., Local 27), Registration Number 405506;**

TO: Ernst & Young Inc.
222 Bay Street
P. O. Box 251
Toronto-Dominion Centre
Toronto ON M5K 1J7

Attention: Philip Kan, Manager
Administrator

AND TO: Forest City International Trucks Ltd.
3003 Page Street
London ON N5V 4J1

Attention: John Parliament, Controller
Employer

AND TO: C.A.W. Local 27
606 First Street
London ON N5V 2A2

Attention: Mr. Tim Carrie, President
Union Representative for the Plan Members

ALLOCATION

WHEREAS on the 7th day of October, 2004 a declaration was made, pursuant to sections 83 and 89 of the Act, that the Pension Benefits Guarantee Fund (the "Guarantee Fund") applies to the Forest City International Trucks Ltd. Non-Contributory Retirement Plan (for Non-Managerial Employees of U.A.W., Local 27), Registration Number 405506, (the "Plan");

NOW THEREFORE I shall allocate from the Guarantee Fund and pay to the Plan, pursuant to subsection 34(7) of R.R.O. 1990, Reg. 909, under the Act (the "Regulation"), an amount not to exceed $585,639.00 to provide, together with the Ontario assets of the Plan, for the benefits determined in accordance with section 34 of the Regulation, and to pay the reasonable administration costs to wind up the Plan. Any money allocated from the Guarantee Fund but not required to provide such benefits or costs shall be returned to the Guarantee Fund.

DATED at North York, Ontario this 14th day of February, 2005.

K. David Gordon
Deputy Superintendent, Pensions

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P. 8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the "Act");

AND IN THE MATTER OF a Declaration by the Superintendent of Financial Services under Section 83 of the Act, respecting the Pension Plan for Employees of Sealcraft Inc., Registration Number 995522 (the "Plan").

TO: PricewaterhouseCoopers Inc.
1 Robert Speck Parkway
Suite 1100
Mississauga ON L4Z 3M3

Attention: Ms. Lois Reyes
Human Resource Services
Administrator

AND TO: Sealcraft Inc.
6525 Northam Dr.
Mississauga ON L4V 1J2

Attention: Ms. Joan Shepherd,
Personnel Manager
Employer

AND TO: Schwartz Levitsky Feldman Inc.
1167 Caledonia Road
Toronto ON M6A 2X1

Attention: Mr. Richard Kline
Trustee in Bankruptcy

ALLOCATION

WHEREAS on the 22nd day of April, 2004 a declaration was made, pursuant to sections 83 and 89 of the Act, that the Pension Benefits Guarantee Fund (the "Guarantee Fund") applies to the Plan;

NOW THEREFORE I shall allocate from the Guarantee Fund and pay to the Plan, pursuant to subsection 34(7) of R.R.O. 1990, Reg. 909, under the Act (the "Regulation"), an amount not to exceed $587,200 that is expected to provide, together with the Ontario assets of the Plan, for the benefits determined in accordance with section 34 of the Regulation, and to pay the reasonable administration costs to wind up the Plan. Any money allocated from the Guarantee Fund but not required to provide such benefits or costs shall be returned to the Guarantee Fund.

DATED at North York, Ontario, this 17th day of February, 2005.

K. David Gordon
Deputy Superintendent, Pensions

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P. 8, as amended by the *Financial Services Commission of Ontario Act, 1997*, R.S.O. 1997, c. 28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make a Declaration under Section 83 of the Act, respecting the **Fantom Technologies Inc. Salaried Employees Retirement Income Plan - Part A and Part B, Registration Number 0910810 (the "Pension Plan")**;

TO: Morneau Sobeco
895 Don Mills Road, Suite 700
One Morneau Sobeco Centre
Toronto ON M2C 1W3

Attention: David Kearney
Principal
Administrator of the Pension Plan

INTERIM ALLOCATION

WHEREAS on December 23, 2004, the Director, Pension Plans Branch declared, pursuant to sections 83 and 89 of the Act, that the Pension Benefits Guarantee Fund (the "Guarantee Fund") applies to the Pension Plan;

NOW THEREFORE I shall allocate from the Guarantee Fund and pay to the Pension Plan, pursuant to subsection 34(7) of R.R.O. 1990, Reg. 909, under the Act (the "Regulation"), an amount not to exceed $1,720,400 (Interim Allocation) which together with a final Allocation, if any, and the Ontario assets of the Pension Plan, is estimated to provide for the benefits determined in accordance with section 34 of the Regulation. Any money allocated from the Guarantee Fund but not required to provide such benefits shall be returned to the Guarantee Fund.

DATED at Toronto, Ontario, this 24th day of February, 2005

K. David Gordon
Deputy Superintendent, Pensions

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P. 8, as amended by the *Financial Services Commission of Ontario Act, 1997*, R.S.O. 1997, c. 28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make a Declaration under Section 83 of the Act, respecting the **Pension Plan for Employees of General Publishing Co. Limited, Registration Number 0563148 (the "Pension Plan");**

TO: Morneau Sobeco
895 Don Mills Road, Suite 700
One Morneau Sobeco Centre
Toronto ON M2C 1W3

Attention: David Kearney
Principal
Administrator of the Pension Plan

INTERIM ALLOCATION

WHEREAS on October 22, 2004, the Director, Pension Plans Branch declared, pursuant to sections 83 and 89 of the Act, that the Pension Benefits Guarantee Fund (the "Guarantee Fund") applies to the Pension Plan;

NOW THEREFORE I shall allocate from the Guarantee Fund and pay to the Pension Plan, pursuant to subsection 34(7) of R.R.O. 1990, Reg. 909, under the Act (the "Regulation"), an amount not to exceed $2,132,800 (Interim Allocation) which together with a final Allocation, if any, and the Ontario assets of the Pension Plan, is estimated to provide for the benefits determined in accordance with section 34 of the Regulation. Any money allocated from the Guarantee Fund but not required to provide such benefits shall be returned to the Guarantee Fund.

DATED at Toronto, Ontario, this 24th day of February, 2005

K. David Gordon
Deputy Superintendent, Pensions

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P. 8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the "Act");

AND IN THE MATTER OF a Declaration by the Superintendent of Financial Services under Section 83 of the Act, respecting the Philip Services Inc. Retirement Pension Plan for Members of United Steelworkers of America, Local 6098, Registration Number 347047 (the "Plan").

TO: **PricewaterhouseCoopers Inc.**
1 Robert Speck Parkway
Suite 1100
Mississauga ON L4Z 3M3

Attention: Ms. Lois Reyes
Human Resource Services
Administrator

AND TO: **Philip Services Inc.**
c/o PSC Metals Inc.
20521 Chagrin Boulevard
Cleveland OH 44122

Attention: Ms. Linda Bogdanovic,
Director, Human Resources
Employer

AND TO: **Ernst & Young Inc.**
220 Bay Street, P.O. Box 251
Ernst & Young Tower
Toronto-Dominion Centre
Toronto ON M5K 1J7

Attention: Ms. Leslea Gordon
Trustee in Bankruptcy

AND TO: **United Steelworkers of America, Local 6098**
1031 Barton Street East,
Room 113
Hamilton ON L8L 3E3

Attention: Mr. Charlie Scibetta
Union Representative for the Members of the Plan

ALLOCATION

WHEREAS on the 26th day of August, 2004 a declaration was made, pursuant to sections 83 and 89 of the Act, that the Pension Benefits Guarantee Fund (the "Guarantee Fund") applies to the Plan;

NOW THEREFORE I shall allocate from the Guarantee Fund and pay to the Plan, pursuant to subsection 34(7) of R.R.O. 1990, Reg. 909, under the Act (the "Regulation"), an amount not to exceed $1,387,477 that is expected to provide, together with the Ontario assets of the Plan, for the benefits determined in accordance with section 34 of the Regulation, and to pay the reasonable administration costs to wind up the Plan. Any money allocated from the Guarantee Fund but not required to provide such benefits or costs shall be returned to the Guarantee Fund.

DATED at North York, Ontario, this 24th day of February, 2005.

K. David Gordon
Deputy Superintendent, Pensions

FINANCIAL SERVICES TRIBUNAL ACTIVITIES

Appointments of Financial Services Tribunal Members

Name and O.C.	Effective Appointment Date	Expiry Date
McNairn, Colin (Chair)		
O.C. 1518/2004	August 11, 2004	August 10, 2006
O.C. 1192/2004	June 9, 2004	September 8, 2004
O.C. 1623/2001	June 20, 2001	June 19, 2004
O.C. 1809/98	July 8, 1998	July 7, 2001
Corbett, Anne (Vice-Chair)		
O.C. 1519/2004	August 11, 2004	August 10, 2006
O.C. 1193/2004	June 9, 2004	September 8, 2004
O.C. 1438/2001	June 20, 2001	June 19, 2004
Solursh, John M. (Vice-Chair)		
O.C. 2407/2004	February 25, 2005	February 24, 2008
O.C. 1521/2004	August 11, 2004	August 10, 2006
Ashe, Kevin		
O.C. 1510/2002	September 26, 2002	September 25, 2005
Bharmal, Shiraz Y.M.		
O.C. 1511/2002	September 9, 2002	September 8, 2005
Brown, Martin J. K.		
O.C. 1522/2004	August 11, 2004	August 10, 2006
Erlichman, Louis		
O.C. 44/2005	January 22, 2005	July 21, 2005
O.C. 439/2002	January 23, 2002	January 22, 2005
O.C. 2527/98	December 9, 1998	December 8, 2001
O.C. 1592/98	June 17, 1998	December 16, 1998
Gavin, Heather		
O.C. 45/2005	January 22, 2005	July 21, 2005
O.C. 440/2002	January 23, 2002	January 22, 2005
O.C. 11/99	January 13, 1999	January 12, 2002
Harmer, Lily		
O.C. 2043/2004	December 1, 2004	November 30, 2006
Holden, Florence A.		
O.C. 1523/2004	August 11, 2004	August 10, 2006
Litner, Paul W.		
O.C. 1512/2002	September 9, 2002	September 8, 2005
Scane, Ralph Edward		
O.C. 1520/2004	August 11, 2004	August 10, 2006
Short, David A.		
O.C. 2095/2004	November 3, 2004	November 2, 2006
O.C. 2118/2001	October 24, 2001	October 23, 2004

Pension Hearings Before the Financial Services Tribunal

Revised Retirement Plan for Employees of the Allen-Bradley Division of Rockwell International of Canada (now the Pension Plan for Employees of Rockwell Automation Canada Inc.), Registration Number 321554, and the Pension Plan for Salaried and Management Employees of Reliance Electric Limited, Registration Number 292946, FST File Number P0051-1999;

On May 18, 1999, members of the Reliance Plan, requested a hearing regarding a decision of the Director of the Pension Plans Branch of the Financial Services Commission, by delegated authority from the Superintendent of Financial Services, dated March 20, 1999, with respect to the transfer of assets from the Pension Plan for Salaried and Management Employees of Reliance Electric Limited to the Revised Retirement Plan for Employees of the Allen-Bradley Division of Rockwell International of Canada.

On June 2, 1999, an application for party status was filed by Rockwell Automation Canada Inc.

At the pre-hearing conference on July 6, 1999 full party status was granted. The matter was adjourned *sine die* as the Applicants indicated that an application would be made to the Superintendent requesting a wind up of the Reliance Plan and all parties agreed that it would be premature to proceed in this matter until the Superintendent has made a decision respecting the request for wind up.

The pre-hearing conference resumed on January 20, 2005, and is scheduled to continue on May 2, 2005.

Schering-Plough Healthcare Products Canada Inc. Salaried Employees' Pension Plan, Registration Number 297903, FST File Number P0085-1999;

On November 10, 1999, Schering-Plough Healthcare Products Canada Inc. filed a request for hearing regarding the Superintendent's Notice of Proposal dated October 14, 1999, ordering Schering-Plough Healthcare Products Canada Inc. to amend the partial wind up report with respect to its salaried pension plan as at August 31, 1996, so that the surplus attributable to the partial wind up group would be distributed.

On March 27, 2000 a number of affected plan members filed an application for party status. The matter was adjourned *sine die* on May 10, 2000 pending the outcome of the Monsanto case. On July 29, 2004, the Supreme Court of Canada released its decision in the *Monsanto* case. On September 2, 2004, the Superintendent requested a pre-hearing conference be scheduled.

The pre-hearing conference scheduled on December 15, 2004, was adjourned on consent of the parties and rescheduled for March 30, 2005. On March 10, 2005, the parties advised that a revised partial wind up report was filed with the Superintendent and requested that the pre-hearing conference on March 30, 2005, be adjourned until an amended notice of proposal has been issued. On March 14, 2005, the matter was adjourned *sine die*.

Eaton Yale Limited Pension Plan for Salaried Employees of Cutler-Hammer Canada Operations, Registration Number 440396, FST Number P0117-2000;

On August 4, 2000, Eaton Yale Ltd. filed a request for hearing with respect to the Superintendent's Notice of Proposal dated June 22, 2000, proposing to order that the Plan be wound up in part in relation to those members and former members of the Plan who ceased to be employed by Eaton Yale from February 23, 1994 to January 12, 1995 as a result of the closure of two manufacturing facilities, located at Mount Forest, Ontario and St. Jean-sur-Richelieu, Quebec, on or about February 23, 1994.

At the request of the parties, this matter was adjourned *sine die* on November 9, 2000 pending the outcome of the Monsanto case. On July 29, 2004, the Supreme Court of Canada released its' decision in the *Monsanto* case. On September 2, 2004, the Superintendent requested a pre-hearing conference be scheduled.

On March 16, 2005, the Applicant withdrew its request for hearing.

Elaine Nolan, George Phillips, Elisabeth Ruccia, Kenneth R. Fuller, Paul Carter, R.A. Varney and Bill Fitz being the members of the DCA Employees Pension Committee, Pension Plan for the Employees of Kerry (Canada) Inc., Registration Number 238915, FST File Number P0192-2002;

On May 27, 2002, William Fitz on behalf of the DCA Employees Pension Committee, requested a hearing regarding the Superintendent's Notice of Proposal, dated April 22, 2002, proposing to refuse to make an order that:

- the Plan be wound up, effective December 31, 1994;
- Kerry (Canada) Inc. pay to the pension fund (the "Fund") of the Plan all employer contributions for which a contribution holiday was taken since January 1, 1985, together with income that would have been earned by the Fund if those contributions had been made; and
- registration of the Revised and Restated Plan Text dated January 1, 2000, and all amendments to the Plan included therein, be refused.

On June 5, 2002, Kerry (Canada) Inc. filed an application for party status.

At the pre-hearing conference on October 15, 2002, full party status was granted to Kerry (Canada) Inc. The pre-hearing conference was adjourned to allow the parties to bring certain motions with respect to disclosure. At the motion hearing on December 6, 2002, three orders for disclosure were issued, one against Kerry (Canada) Inc., one against the DCA Employees Committee and one against the Superintendent.

On January 22, 2003, the pre-hearing conference resumed and was further adjourned to allow a further disclosure motion to be brought by the DCA Employees Pension Committee. The motion was heard on March 27, 2003, at which time it was dismissed.

On June 5, 2003, the pre-hearing conference resumed to deal with the framing of the "partial wind-up issue." The DCA Employees Pension Committee indicated that it would be bringing a motion for an order that would add an issue to or otherwise amend the matters in issue. That motion and another motion by Kerry (Canada) Inc. to amend the "partial

wind up issue" were heard on June 25, 2003. At the hearing, the parties agreed on a revised wording of the "partial wind up issue," and it was ordered that the statement of the issues in the proceeding be amended accordingly.

At a resumption of the pre-hearing conference on October 14, 2003, the parties agreed to hearing dates. On March 2-3, 2004, the Tribunal heard the evidence of the witnesses who were put forward in this matter.

On April 8, 2004, the Tribunal heard argument from the parties with respect to the DCA Employees Pension Committee's request that the Tribunal issue reasons for decision concerning the earlier motions for disclosure brought by the Committee. The Tribunal denied the request. The Tribunal also heard argument from the parties concerning the Applicant's reply submissions, in addition to a request that the argument phase of the hearing be adjourned to permit surreply submissions from the Respondents. The Respondents argued that the Applicant's reply submissions raised new issues and arguments not previously addressed. The request for adjournment was granted to allow the Respondents time to prepare, file and serve surreplies to the Applicant's reply. On June 8 and 9, 2004, the Tribunal heard oral arguments from the parties.

In its Reasons for Decision dated September 1, 2004, the Tribunal ordered the Superintendent to carry out the proposals in its Notice of Proposal except that the Superintendent was ordered to deny registration of the 2000 Plan unless certain amendments were made to preserve the interests of the Plan members who were beneficiaries of the trust in respect of the Fund, failing which the Superintendent was ordered to require Kerry (Canada) to reimburse the Fund for contribution holidays taken in respect of the Plan since January 1, 2000. The Reasons for Decision were published in Volume 14, Issue 1 of the Pension Bulletin.

On September 29, 2004, the DCA Employees Pension Committee made a request to the Tribunal for an order of costs against Kerry (Canada) Inc. payable out of the Fund. On October 1, 2004, Kerry (Canada) Inc. made a request to the Tribunal for an order of costs against the DCA Employees Pension Committee. A hearing on the issue of costs was held on December 9, 2004. In its Reasons dated December 24, 2004, the Tribunal denied both applications for cost orders. The Reasons are published in this bulletin on page 93.

Hugo Jaik, Electrical Industry of Ottawa Pension Plan, Registration Number 0586396, FST File Number P0235-2004;

On February 16, 2004, Hugo Jaik, a former member of the Plan, requested a hearing regarding the Deputy Superintendent, Pensions' Notice of Proposal, dated January 28, 2004, to refuse to make an order requiring the Board of Trustees of the Electrical Industry of Ottawa Pension Plan (the "Board") to recalculate the pension benefits of members, and specifically to recalculate Mr. Jaik's pension benefit, and requiring that the composition of the Board be amended to comply with the terms of the Plan and declaring that the decisions of the Board improperly constituted are invalid.

A pre-hearing conference was held on May 25, 2004. On July 15, 2004, the Board filed an application for party status. At a resumption

of the pre-hearing conference on July 26, 2004, full party status was granted to the Board of Trustees.

At a settlement conference on August 5, 2004, the parties were unable to settle the matter. At a resumption of the pre-hearing conference on August 30, 2004, the hearing date of September 27, 2004 was cancelled and rescheduled to November 30, 2004, and was further rescheduled to January 24, 2005. At the end of the hearing, the Tribunal reserved its decision.

Coats Canada Inc., Coats Canada Employees' Pension Plan, Registration Number 288563, FST File Number P0237-2004;

On March 2, 2004, Coats Canada Inc. (the "Employer"), requested a hearing regarding the Deputy Superintendent, Pensions, Notice of Proposal dated February 5, 2004, to make an Order under section 69(1) of the Act, that the Plan be wound up in part in relation to those members and former members of the Plan who were employed by the Employer and who ceased to be employed between July 1999, and December 31, 1999, as a result of:

(i) the discontinuance of all or a part of the business of the Employer; or
(ii) the discontinuance of all or a significant portion of the business carried on by the Employer at its Coats Paton Division

On March 4, 2004, the Applicant requested agreement from the Superintendent to adjourn this matter *sine die* pending the outcome of the *Monsanto* case. On March 12, 2004, the Superintendent agreed to the adjournment. On July 29, 2004, the Supreme Court of Canada released its decision in the *Monsanto* case. On September 2, 2004, the Superintendent requested a pre-hearing conference be scheduled.

A pre-hearing conference is scheduled for April 15, 2005.

Constantin Munteanu, Portship Employees Negotiated Pension Plan, Registration Number 0393199; FST File Number P0240-2004;

On June 10, 2004, Constantin Munteanu a former member of the Plan, requested a hearing regarding the Notice of Proposal of the Deputy Superintendent, Pensions, dated April 8, 2004, proposing to refuse to make an Order directing Pascol Engineering, formerly Port Arthur Shipbuilding Company, to make an additional payment from the pension fund for the Portship Employees Negotiated Pension Plan in respect of Mr. Munteanu's pension benefits or the commuted value of his pension benefits.

The request for hearing was filed outside the 30-day time period set out in subsection 89(6) of the *Pension Benefits Act* (the "Act"). The parties to the proceeding, namely Mr. Munteanu and the Superintendent, and Pascol Engineering were invited to file written representations with the Tribunal directed to the following questions:

- whether the Tribunal has the authority to extend the 30-day time period for making a request for a hearing under s. 89(6) of the Act and,
- if so, whether the Tribunal should exercise that authority in the circumstances of this case.

The parties filed written representations with the Tribunal in November 2004. In its Reasons for Decision dated November 29, 2004, the Tribunal determined that it had the authority to extend the statutory time period and proceeded to grant such an extension as well as an extension of the similar time period under the Tribunal's Rules of Practice and Procedure for filing a formal Request for Hearing. Therefore, a hearing in this matter will now be convened. The Reasons for Decision dated November 29, 2004, were published in Volume 14, Issue 1 of the Pension Bulletin.

A pre-hearing conference was held on January 14, 2005. The hearing is scheduled for April 28, 2005. On March 16, 2005, the Applicant withdrew the request for hearing and the hearing date of April 28, 2005, was cancelled.

Power Workers' Union, Kinectrics Inc. Pension Plan, Registration Number 1075787; FST File Number P0242-2002;

On July 15, 2004, the Power Workers' Union requested a hearing regarding a refusal, evidenced by a letter from the Pension Plan Branch of the Financial Services Commission dated May 28, 2004, to issue an Order under s. 87 of the *Pension Benefits Act* requiring the administrator of the Kinectrics Inc. Pension Plan to take certain action and to refrain from taking other action in order to bring the Plan into compliance with the Act. The Power Workers' Union had requested that the Superintendent issue a Notice of Proposal requiring Kinectrics Inc. to immediately cease taking a contribution holiday, to prepare and file an updated actuarial report, and to commence funding the Plan pursuant to the updated actuarial report. The Pension Plan Branch took the position, in its May 28 letter, that the Plan was being funded in accordance with the latest filed actuarial report and that no new actuarial report was yet due as the filed report did not disclose a funding concern.

On July 23, 2004, Kinectrics Inc. filed an application for party status. At a pre-hearing conference on November 15, 2004, the Tribunal was advised that a new actuarial report in respect of the Plan had been filed by Kinectrics Inc. showing a surplus in the fund for the Plan. At that pre-hearing conference, full party status was granted to Kinectrics Inc. and the conference was then adjourned, at the request of the parties, to allow for a settlement conference.

A settlement conference was held on November 15, 2004, at which time the parties requested the settlement conference resume again on December 7, 2004. On December 3, 2004 the parties advised that a settlement was reached and the December 7th date was not required.

Mary Sutton and other members and former members, AIG Assurance Canada Pension Plan, Registration Number 0284604; FST File Number P0245-2004

On November 23, 2004, Mary Sutton and other members and former members of the AIG Pension Plan (the "Applicants") requested a hearing regarding the Notice of Proposal of the Deputy Superintendent, Pensions, dated October 22, 2004, proposing to refuse to make an Order that the AIG Pension Plan be wound up pursuant to s. 69(1)(a) of the *Pension Benefits Act* (the "Act"). On December 3, 2004, AIG

Assurance Canada (the "Employer") filed an application for party status.

The Applicants had asked the Superintendent to make an Order that the AIG Pension Plan be wound up principally on the basis that the Employer had discontinued all contributions to the Plan at such time as the members commenced participation in another pension plan – the "Commerce Pension Plan"- which was established on a defined contribution basis. The AIG Pension Plan was a defined benefit plan with a substantial surplus. It was converted to a defined contribution plan immediately before the members commenced participation in the Commerce Pension Plan. Those members were given the option of converting their accrued benefits under the AIG Pension Plan into a defined contribution account or having those benefits provided by way of annuities.

The employer had applied for the Superintendent's approval, pursuant to s. 81 of the Act, to the transfer of the assets of the AIG Plan, including the assets representing the surplus in the Plan, to the Commerce Pension Plan. The Applicants, relying on the decision of the Ontario Court of Appeal in *Aegon Canada Inc. and Transamerica Life Canada v. ING Canada Inc.*, [2003] O.J. No. 4755, objected to the grant of such approval on the basis that the pension and other benefits of the members of the AIG Pension Plan would not be protected in such a transfer.

In refusing to order that the AIG Pension Plan be wound up, the Deputy Superintendent took the position that s. 69(1)(a) of the Act can have no application where the contributions to a pension plan are being transferred to another pension plan and that transfer can be approved pursuant to s. 81 of the Act. As to the application for approval of the transfer of assets from the AIG Pension Plan to the Commerce Pension Plan, the Deputy Superintendent took the position that, unlike the situation in *Aegon*, the trust in respect of the AIG Pension Plan did not preclude the amendment of the Plan to allow for its merger with another pension plan, which amendment had been made, and no separate accounting of the assets contributed to the merged pension plan was required. A final decision on the application for approval of the asset transfer, pursuant to s. 81 of the Act, was, nonetheless, deferred pending the outcome of the Notice of Proposal to refuse to order the wind up of the AIG Pension Plan.

The pre-hearing conference scheduled for February 18, 2005, in this matter, was adjourned on consent of the parties and re-scheduled for March 22, 2005. At the pre-hearing conference, full party status was granted to AIG Assurance Canada. The hearing is scheduled for June 27-30, 2005.

Julian Paul, Ontario Public Service Employees' Union Pension Plan, Registration Number 1012046; FST File Number P0246-2004

On December 7, 2004, Julian Paul (the "Applicant") requested a hearing regarding the Notice of Proposal of the Deputy Superintendent, Pensions, dated November 30, 2004, to refuse to make an Order, pursuant to s. 87(1) of the Pension Benefits Act (the "Act"), directing the OPSEU Pension Plan to allow the Applicant to purchase past service credits in the Plan for the period December 3, 1977 to April 2, 1979. The Order was refused on the basis that the Applicant, while eligible

to purchase certain past service credits, had not submitted a formal application to effect such a purchase within the relevant time limits for making such an application. In the circumstances, the Deputy Superintendent concluded that the administrator of the Plan had not failed to administer the Plan in accordance with the provisions of the Act, the Regulation under the Act or the Plan so as to justify the making of an Order pursuant to s. 87(1) of the Act.

On February 3, 2005, an application for party status, in this matter, was filed by OPSEU Pension Trust, the administrator of the Plan. At the pre-hearing conference on February 24, 2005, full party status was granted. The hearing is scheduled for April 27, 2005.

Paramount Pictures (Canada) Inc., Retirement Plan for Salaried Employees of Famous Players and Subsidiary and Affiliated Companies, Registration Number 552752; FST File Number P0248-2005

On January 7, 2005, Paramount Pictures (Canada) Inc. (the "Employer") requested a hearing regarding three Notices of Proposal of the Deputy Superintendent, Pensions, dated December 3, 2004, proposing to:

- refuse to approve a report, dated May 7, 2002, on the actuarial valuation of the retirement plan for the salaried employees of the Employer (the "Pension Plan") as at December 31, 2001;
- refuse consent to an application, dated January 9, 2003, submitted by the Employer, for the withdrawal of surplus on the wind up of the Pension Plan; and
- make an Order winding up the Pension Plan effective December 31, 2001.

The approval and consent were sought by the Employer pursuant to ss. 70(5), and 78(1), respectively, of the *Pension Benefits Act* (the "Act") and the Order was proposed to be made by the Deputy Superintendent under s. 69(1)(a) of the Act.

The Deputy Superintendent refused to approve the report on the actuarial valuation of the Pension Plan because the proposal to wind up the Plan was not unconditional, being dependent on the Employer obtaining the necessary regulatory and court approvals, and because the report did not, apparently, include all the members affected by the Plan termination.

The request for approval of the surplus withdrawal application was refused because:

- the Pension Plan was not being wound up given the contingent nature of the wind up proposal, in which case consent of all the Plan members to any withdrawal of surplus was required, as it was an on-going pension plan, but such unanimous approval was not obtained;
- the Plan did not provide for payment of surplus to the Employer on wind up of the Plan as there was a trust, for the benefit of the members of the Plan, in respect of the pension fund for the Plan and as no power was reserved to revoke that trust, the amendments to the terms of the trust providing that, at termination of the Plan, any surplus in the pension fund should be paid to the Employer, were invalid.

The Deputy Superintendent proposed to make the Order winding up the Pension Plan,

effective December 31, 2001, on the basis that as at May 31, 2001 there was a cessation of employer contributions to the pension fund as evidenced by notices sent by the Employer to the members on that date proposing to terminate the Plan and share the surplus with the members and by the report on the actuarial valuation of the Plan as at December 31, 2001, which indicated that there were no active members and that the Employer was not required to make contributions to the Plan.

The pre-hearing conference scheduled for April 5, 2005 was adjourned on March 31, 2005, at the request of the parties in favour of a settlement conference. The settlement conference is scheduled for June 1, 2005.

Stel Salaried Pensioners Organization, Stelco Inc. and Participating Subsidiaries Retirement Plan for Salaried Employees, Registration Number 0338509; the Stelco Inc. Retirement Plan for Lake Erie Steel Company Salaried Employees, Registration Number 0698753; "the Salaried Pension Plans"; FST File Number P0250-2005

On January 31, 2005, members of the Stel Salaried Pensioners Organization filed a Notice of Appeal in respect of a letter from the Pension Plans Branch of the Financial Services Commission of Ontario, dated January 7, 2005, in which a representative of the Superintendent takes the position that the decision by Stelco Inc. to pay certain Pension Benefits Guarantee Fund assessments out of the surpluses in the Salaried Pension Plans complies with the Regulation under the *Pension Benefits Act* and, in particular, s. 7(4) thereof, as such payments were made out of going concern surpluses in circumstances where no special payments were required to be made with respect to the Salaried Pension Plans on account of solvency deficiencies.

This matter stands adjourned *sine die* due to a stay of proceedings against Stelco Inc. pursuant to proceedings under the *Companies' Creditors Arrangement Act*.

The following cases are adjourned *sine die*

- **The Retirement Plan for Salaried Employees (Consumer Foods) of General Mills Canada, Inc., Registration Number 342042, FST File Number P0058-1999;**
  A pre-hearing conference scheduled for December 8, 2004 was adjourned *sine die* at the request of the parties on October 27, 2004, due to settlement discussions.

- **Cooper Industries (Canada) Inc., Retirement Plan for Salaried Employees of Cooper Canada – Plan A Registration Number 0240622, FST File P0156-2001;**
  The pre-hearing conference, scheduled for November 1, 2004, was adjourned on consent of the parties to allow for settlement discussions.

- **Crown Cork & Seal Canada Inc., Registration Numbers 474205, 595371 & 338491, FST File Number P0165-2001;**
  At a settlement conference on October 30, 2001, the parties agreed to adjourn the matter *sine die* pending discussions between the parties.

- **James MacKinnon (Labourers' Pension Fund of Central**

and Eastern Canada), Registration Number 573188, FST File Number P0167-2001;
On July 10, 2002, the hearing dates were adjourned *sine die* on consent of the parties.

- **Bauer Nike Hockey Inc. Pension Plan for Employees of Bauer Nike Hockey Inc., Registration Number 257337, FST File Number P0189-2002;**
At the pre-hearing conference on October 28, 2002, the matter was adjourned *sine die* pending the outcome of the *Monsanto* case.

- **Slater Steel Inc. Pension Plan for Corporate Employees and Salaried Employees of the Hamilton Specialty Bar Division, Registration Number 308338, FST File Number P0203-2002;**
On June 2, 2003, an Order was issued by the Ontario Superior Court of Justice in relation to Slater Steel Inc., pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36. The Order includes a stay of all proceedings. The hearing in this matter originally scheduled for October 8-10, 15-16, 2003, therefore did not proceed.

- **George Polygenis, Public Service Pension Plan, Registration Number 0208777, FST File Number P0204-2002;**
On May 29, 2003, the parties consented to adjourn the June 11, 2003 hearing date *sine die*, pending finalization of a settlement.

- **Slater Stainless Corp. Pension Plan for Slater Stainless Corp. Members of the National Automobile Aerospace, Transportation and General Workers Union of Canada (CAW-Canada), Registration Number 561456, FST File Number P0220-2003;**
The pre-hearing conference scheduled for June 16, 2003 did not proceed since an Order was issued on June 2, 2003 by the Ontario Superior Court of Justice in relation to Slater Stainless Corp., pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36. The Order includes a stay of all proceedings.

- **Slater Stainless Corp. Pension Plan for Slater Stainless Corp. Members of the United Steel Workers of America (Local 7777), Registration Number 561464, FST File Number P0221-2003;**
The pre-hearing conference scheduled for June 16, 2003 did not proceed since an Order was issued on June 2, 2003 by the Ontario Superior Court of Justice in relation to Slater Stainless Corp., pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36. The Order includes a stay of all proceedings.

- **Jane Parker Bakery Limited Retirement Plan for Full-time Bargaining Employees, Registration Number 0400325, FST File Number P0224-2003**
On September 8, 2003, the parties advised they agreed to proceed with settlement discussions, and requested that the pre-hearing conference scheduled for September 10, 2003, be adjourned to a date to be determined if one becomes necessary

- **Plumbers Local 463 Pension Plan, Registration Number 0598532, FST File Number P0230-2003**
  On February 26, 2004, the matter was adjourned *sine die* pending the outcome of an application, by the Applicant, for judicial review of the Superintendent's Order dated October 6, 2003.

- **Peter Stopyn, Douglas Llewellyn, United Association of Journeyman and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 67, Registration Number 381525; FST File Number P0239-2004;**
  The pre-hearing conference scheduled for November 23, 2004, was adjourned *sine dine* at the request of the applicants.

Financial Hardship

Application to the Superintendent of Financial Services for Consent to Withdraw Money from a Locked-in Retirement Account, Life Income Fund or Locked-in Retirement Income Fund based on Financial Hardship.

FST File Number	Superintendent of Financial Services' Notice of Proposal	Comments

Decisions to be Published

DCA Employees' Pension Committee (Costs)

FST File No. PO192-2002 Decision No. P0192-2002 -2
FINANCIAL SERVICES TRIBUNAL

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "PBA");

AND IN THE MATTER OF a proposal of the Superintendent of Financial Services to refuse to make an order under sections 69 and 87 of the Act relating to the Pension Plan for the Employees of Kerry (Canada) Inc., Registration Number 238915 (the "Pension Plan");

AND IN THE MATTER OF a Hearing in accordance with subsection 89(8) of the PBA;

BETWEEN:

ELAINE NOLAN, GEORGE PHILLIPS, ELISABETH RUCCIA, KENNETH R. FULLER, PAUL CARTER, R.A. VARNEY and BILL FITZ, being members of the DCA EMPLOYEES PENSION COMMITTEE, representing certain of the members and former members of the Pension Plan for the Employees of Kerry (Canada) Inc.

Applicants

-and-

SUPERINTENDENT OF FINANCIAL SERVICES and KERRY (CANADA) INC.

Respondents

DISPOSITION OF APPLICATIONS FOR COSTS

REASONS OF MESSRS. BHARMAL AND SHORT

1. The Background

In Reasons for Decision in this proceeding dated September 1, 2004, following a hearing on the merits, the Tribunal addressed the issues raised through a request for a hearing made by the Applicants acting in a representative capacity on behalf of certain members and former members of the Pension Plan for the employees of Kerry (Canada) Inc. (the "Company"). That request called into question certain proposals made by the Superintendent of Financial Services (the "Superintendent") to refuse to take various actions, in respect of the Pension Plan, that the Applicants had asked the Superintendent to initiate. As a result of the decision of the Tribunal, the Applicants were successful in some elements of their challenge to the Superintendent's proposals and the Superintendent and the Company, whose positions largely coincided, were successful in sustaining other elements of the proposals.

The Reasons for Decision indicated that the Tribunal would entertain applications for costs in respect of the proceeding that might be made by any of the parties in writing. Shortly after those Reasons were issued, the Applicants notified the Registrar of the Tribunal of their intention to apply for an order of costs and filed and served written submissions in support of such an order on September 29, 2004. The application is for an order against the Company to pay the costs of the Applicants from the pension fund for the Pension Plan or to pay such costs with an accompanying direction that those costs are an appropriate administrative expense to be borne by the fund. In the alternative, the Applicants ask for an unqualified order of costs against the Company.

On October 1, 2004, the Company served and filed written submissions in support of an order for the payment of its costs by the Applicants.

The Tribunal invited the parties, through a letter from the Registrar dated October 29, 2004, to make oral submissions on the following question:

> Does the Tribunal have the authority to make an award for the payment of all or any of the costs incurred by a party in a pension proceeding out of the pension fund and, if so, what factors are relevant in determining whether to make such an award?

The Tribunal heard oral submissions on that question on December 9, 2004. The Applicants argued that the Tribunal had the authority to make such an award, while the Company and the Superintendent argued that the Tribunal did not have that authority. However, the Company maintained that if the Tribunal could make such an award, then the Company's costs, if not payable by the Applicants, ought to be paid from the pension fund for the Pension Plan.

2. The Tribunal's Authority in Respect of Cost Orders

The Tribunal has the authority, under s. 24(1) of the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the "FSCO Act") to "order that a party to a proceeding before it pay the costs of another party or the Tribunal's costs of the proceeding".

Section 17.1 of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S-22, as amended (the "SPPA") also addresses orders to pay costs, stating, in subsection (1), that a tribunal (such as the Financial Services Tribunal) may "order a party to pay all or part of another party's costs in a proceeding". The section also describes the circumstances in which such an order may be made as those set out in rules adopted by the tribunal to govern the practice and procedure before it, subject to the proviso, in subsection (2), that an order to pay costs, under the section, shall not be made unless;

- the party against which it is directed has engaged in unreasonable, frivolous or vexatious conduct or has acted in bad faith, and
- the tribunal has adopted rules governing its practice and procedure that deal with cost orders, including the circumstances in which payment of costs may be ordered, the amount of such costs and the manner in which the amount of costs is to be determined.

However, by virtue of subsection (4), these limitations are not to prevent a tribunal from making an order for the payment of costs in other circumstances (and without complying with the rest of the provisions of s. 17.1) where the order is made "in accordance with the provisions of an Act ... in force on the day" s. 17.1 came into effect. Section 24(1) of the FSCO Act is such a provision as it pre-dates s. 17.1 of the SPPA. Therefore, the broad authority of the Tribunal to make an order for costs under s. 24(1) of the FSCO Act is not restricted by s. 17.1 of the SPPA and, in particular, by subsection (2) thereof, which limits a tribunal to ordering costs against a party to situations where that party has acted in bad faith or has exhibited conduct or a course of conduct that is unreasonable, frivolous or vexatious.

The Tribunal has adopted Rules of Practice and Procedure for Proceedings before the Financial Services Tribunal (effective August 1, 2004) as it is entitled to do by virtue of its authority under s. 22(a) of the FSCO Act and its supplementary authority under s. 25.1 of the SPPA. The Rules address the circumstances in which an order for costs can be made in favour of one party to a proceeding against another party by setting out, in Rule 45, the criteria to be considered by the Tribunal in deciding whether to make such an order. The Tribunal is also authorized, under Rule 47.01, to issue practice directions on costs dealing with "general costs assessment policies and tariffs, hourly rates for representatives and consultants, allowable disbursements, and other matters that the Tribunal may consider appropriate". The Tribunal has made a practice direction, namely its Practice Direction on Cost Awards (revised effective August 1, 2004), that, in our view, fits within this enabling Rule. Among other things, that Practice Direction states the general principle that the Tribunal "need not follow the civil trial practice where the usual rule is that the unsuccessful party pays the successful party's costs" (section 2) and sets out some examples of conduct engaged in by a party against which an order for costs is sought that may make it more or less likely that such an order will be made (clauses a and b of section 2). These Rules and this Practice Direction are relevant to the Tribunal's assessment of whether the circumstances justify the making of either or both of the orders of costs applied for in this proceeding.

We find nothing in the Rules, as they relate to cost orders, that is inconsistent with the FSCO Act and the SPPA and, therefore, in violation of s. 25.1(3) of the latter Act, which requires consistency in this regard. The Applicants maintained that any rules of the Tribunal relating to cost awards could simply address the amount of such awards since s. 24 of the FSCO Act only refers to such rules in subsection (3), where it states that: "The Tribunal shall determine the amount of an order for costs in accordance with the rules of the Tribunal". We think that this statement is only for greater certainty and ought not to be taken, by implication, to detract from the broad authority of the Tribunal to make rules of practice and procedure under s. 22(a) of the FSCO Act and s. 25.1 of the SPPA.

3. The Tribunal's Authority to Make an Order for Costs that are or may be Payable out of the Fund for the Pension Plan

Section 24(1) of the FSCO Act and s. 17.1 of the SPPA - the potential statutory sources of the Tribunal's authority to make an order for costs - refer to orders directed to a party to a proceeding to pay the costs of another party (although s. 24(1) of the FSCO Act goes beyond this to authorize an order compelling a party to pay the costs of the Tribunal and the Superintendent incurred in connection with a proceeding before the Tribunal). We think that it would be stretching the wording of these provisions beyond the meaning they can reasonably bear if we were to read the provisions as authorizing an order for costs payable, or subject to reimbursement, out of the fund for a pension plan. The burden of such an order would fall upon the fund, which would not normally be a party to a proceeding before the Tribunal. The fund for the Pension Plan was not a party to this proceeding. Although it was under the stewardship of one of the parties, that does not make it a *de facto* party.

The Applicants referred us to several pension cases in which the costs of one or more parties were ordered to be paid out of a pension fund. These cases speak to the authority of the courts to make such an order. The courts normally have a good deal of discretion in procedural matters, whereas the jurisdiction of this Tribunal is entirely statute-based. We doubt that this Tribunal is entitled to assume court-like authority with respect to cost orders without clear direction in its governing legislation. We note that none of the cases to which we were referred offered any rationale for ordering a party's costs to be paid out of a pension fund rather than making them payable, in the usual fashion, by another party or parties.

We are of the view, however, that it would be in the public interest if the Tribunal were to have the authority, in an appropriate case, to make an order for costs, in favour of a party to a proceeding before it, that are payable out of a pension fund. The existence of such authority might encourage persons, such as pension plan members, to take advantage of the Tribunal's processes that they might otherwise be deterred from resorting to given the heavy burden of establishing the case for an order of costs against another party that must be paid out of pocket without resort to a pension fund.

The Superintendent suggested that the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "PBA") already provides authority, in s. 87, for an order directing the payment of legal costs out of a pension fund, which could be made, as appropriate, by the Superintendent after the Tribunal had disposed of a request for a hearing relating in some way to that pension fund. Section 87 of the PBA authorizes the Superintendent to make an order requiring a plan administrator or other person to take any action in respect of a pension plan or a pension fund if he or she is of the opinion, among other things, that the plan or fund is not being administered in accordance with the PBA, the regulations under it or the pension plan. This provision would seem to allow the Superintendent to make an order that would bring a pension plan or fund back into line with the PBA, the regulations or the terms of the plan following a perceived breach of any of those instruments. But the non-assumption of legal costs by a pension plan or fund is not, of itself, a circumstance in which s. 87 allows for a corrective order. While s. 87 might, on occasion, provide a basis for an order of costs, it would be bound to have an uneven application, for that purpose, as its availability would turn on the particular wording of the provisions of the pension plan dealing with the expenses that are required to be borne by the plan out of the pension fund. In any event, the plan text is more likely to indicate what expenses may be charged, rather than those that must be charged, against the plan and fund.

4. The Case for an Order of Costs against the Company or the Applicants

We have considered the written submissions of the Applicants, made in support of their application for an order of costs against the Company, in light of the Rules of Practice and Procedure in Proceedings before the Financial Services Tribunal and the Tribunal's Practice Direction on Cost Awards, keeping in mind the general discretion of the Tribunal to award costs under s. 24(1) of the FSCO Act. We have concluded that the case has not been made out for our making an order for costs

against the Company in the circumstances of this proceeding.

We have also considered the written submissions of the Company, made in support of its application for an order of costs against the Applicants, in light of these same factors and have concluded that the case has not been made out for our making an order for costs against the Applicants in the circumstances of this proceeding. In our Disposition of Request for Costs, dated April 28, 2004, relating to an application for costs against the Applicants made by the Company in a related proceeding before this Tribunal (*Kerry (Canada) Inc. v. Superintendent of Financial Services and the Members of the DCA Employees Pension Committee*, FST File No. P0191-2002) we said that:

> In assessing the Committee's conduct in the course of the proceeding ... we have given some weight to the fact that the Committee was not represented by counsel and that its representative, a Committee member, was not familiar with all of the procedural niceties of participation in a proceeding of this kind.

In considering the Company's application for costs in this proceeding, we have taken a similar approach to assessing the conduct of the members of the Committee, the Applicants herein, during the time they were unrepresented by legal counsel, that is the period from the filing of a request for a hearing through until late May of 2004, after the evidence phase but before the argument phase of the hearing in this proceeding, when counsel was retained.

5. Disposition of Applications for Cost Orders

We deny both applications for cost orders.

DATED at Toronto, Ontario this 24th day of December, 2004.

Shiraz Y.M. Bharmal, Member of the Tribunal and of the Panel

David A. Short, Member of the Tribunal and of the Panel

REASONS OF MR. MCNAIRN

I concur with my fellow panel members, Messrs. Bharmal and Short, in the disposition of the applications for cost orders in this proceeding, i.e. the denial of those applications. I also agree with their reasons (the "majority reasons") for disposing of the applications in this way except for the conclusions they arrive at in the first two paragraphs of section 3 of those reasons, headed "The Tribunal's Authority to Make an Order for Costs that are or may be Payable out of the Fund for the Pension Plan". Unlike my colleagues, I have concluded that the Tribunal has that authority. Having found the necessary authority, I then considered whether, if it were up to me, I would make either of the orders for costs applied for in this proceeding with the direction that those costs be paid out of the fund for the Pension Plan, or the surplus thereof, rather than by an opposing party. I have concluded that I would refuse to make such orders in the circumstances of this proceeding. The reasons for these conclusions are set out below.

1. The Tribunal's Authority to Make an Order for Costs that are or may be Payable out of the Fund for the Pension Plan

As noted in the majority reasons, section 24(1) of the FSCO Act and s. 17.1 of the SPPA - the potential statutory sources of the Tribunal's authority to make an order for costs - refer to orders directed to a party to a proceeding to pay the costs of another party. The precise terms of s. 24(1) of the FSCO Act are as follows:

> The Tribunal may make an order that a party to a proceeding before it pay the costs of another party or the Tribunal's costs of the proceeding.

By comparison, the statutory authority of the Ontario courts to deal with costs is set forth in the following terms in s. 131(1) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA"):

> Subject to the provisions of an Act or rule of court, the costs of and incidental to a proceeding or a step in a proceeding are in the discretion of the court, and the court may determine by whom and to what extent the costs shall be paid.

Although there is no specific indication of the kinds of persons who could be required by a court, in its discretion, to bear the costs of a proceeding, the Ontario Court of Appeal has said that the words "by whom" in this provision should be interpreted to mean "by which of the parties to the proceeding before the court ... " (see *Rockwell Developments Ltd. v. Newtownbrook Plaza Ltd.* (1972), 27 D.L.R. (3d) 651, at pp. 659 and 661). Therefore, s. 131(1) of the CJA has the same practical limitation as s. 24(1) of the FSCO Act (and s. 17.1 of the SPPA) in that the persons to whom cost orders may be directed are parties to the proceeding in which the costs are incurred.

The Applicants referred in argument to several pension cases in which court costs were awarded in favour of one or more parties payable, in whole or in part, out of the pension fund for a pension plan or, specifically, the plan surplus in that fund. A number of these cases were before Ontario courts, including: *Re Reevie and Montreal Trust Co. of Canada* (1986), 25 D.L.R. (4th) 312,

see esp. at p. 319 (Ont. C.A.); *C.A.W., Local 458 v. White Farm Manufacturing Canada Ltd.* (1989), 31 E.T.R. 252, see esp. at p. 253 (H.C.J.) (these reasons relate to costs issues and are supplementary to reasons reported at (1988), 32 E.T.R. 202 (H.C.J.); an appeal from the decision in this case was dismissed at (1990), 39 E.T.R. 1 (Ont. C.A.)), *Ontario Teachers' Pension Plan Board v. Ontario (Superintendent of Financial Services) and Anne Stairs* (2003), 36 C.C.P.B. 154, see esp. at pp. 157-160 (the award of costs in this case was affirmed at (2004), 236 D.L.R. (4th) 514, at pp. 544-545 (Ont. C.A.)), *Crownx Inc. v. Edwards* (1994), 120 D.L.R. (4th) 270, see esp. at p. 283 (Ont. C.A.), *Re Sara Lee Corp. of Canada Pension Plan*, [1989] O.J. 2597, see esp. at p. 5 (H.C.J.), *Re Knechtel Furniture Ltd.* (1985), 20 E.T.R. 217, see esp. at p. 224 (H.C.J.), and *Nu-Kote Canada Inc. v. Royal Trust Corp. of Canada* (1991), 4 O.R. (3d) 336, see esp. at p. 343 (Gen. Div.). While none of the decisions in these cases recites the authority of the court for making an order for costs payable out of a pension fund, it can be fairly assumed that the authority comes from s. 131(1) of the CJA even though that provision, as interpreted by the Court of Appeal in *Rockwell*, is to the effect that cost orders must be directed to parties to a proceeding before the court.

Although, historically, the Ontario courts may have had some inherent equitable jurisdiction to make cost awards, the contemporary view is that the jurisdiction of the courts to award costs is not inherent but is dependent on statutory authority. This latter view was expressed by the Ontario Court of Appeal in *Poulton v. Ontario Racing Commission* (1999), 177 D.L.R. (4th) 507, see at p. 510. The court referred to s. 131(1) of the CJA as the source of the relevant statutory authority.

It follows from this analysis that I find sufficient precedent in the cases referred to above for the Tribunal making cost awards payable out of a pension fund, given that the authority of the Ontario courts for making such cost orders should now be taken to be derived from statute and given that the statutory authority of the courts and the statutory authority of this Tribunal to make cost orders are not materially different.

2. The Case for an Order of Costs in Favour of the Applicants or the Company Payable out of the Fund for the Pension Plan

As noted in the majority reasons, the availability of an order of costs payable out of the pension fund for a pension plan will, generally, have the beneficial effect of encouraging plan members to take advantage of the Tribunal's processes in situations where they might otherwise be deterred by the prospect of having to assume all or most of their own costs of doing so. Notwithstanding that beneficial effect, which would support the making of such an order of costs in favour of the Applicants in this proceeding, I do not believe that the appropriate threshold for making such an order has been met due to the following circumstances;

- the Tribunal did not receive any precise evidence of the level of support that the Applicants had from the Pension Plan membership,

- the Applicants success before the Tribunal was relatively limited in relation to the issues and broad arguments that they put to the Tribunal at various stages of the

proceeding; the Applicants were not successful in persuading the Tribunal to order the Superintendent to direct a partial wind up of the Pension Plan which, of all the relief requested by the Applicants, would apparently have generated the most benefit for a significant number of the members of the Pension Plan,

- there had not been any particular confusion or uncertainty in the pension world about how most of the issues raised by the Applicants in this proceeding should be resolved,

- the Applicants were responsible for some significant delays in the proceeding that could have been reasonably avoided, such as (but not limited to) a duplicative discovery motion, although I have discounted, to some extent, the significance to be attached to the delays that occurred in the preliminary stages of this proceeding since;

    - they occurred before the Applicants were represented by counsel and, therefore, before the legal costs that they seek to recover were incurred, and

    - at the relevant time, the Applicants were represented by one of their number who was not familiar with all the procedural niceties of participation in a proceeding of this kind.

Since a plan sponsor and administrator, such as the Company, is likely to be able to absorb the costs of its participation in a proceeding before the Tribunal more easily than plan members, the Tribunal should be less inclined to make an order for costs in favour of such a party payable out of a pension fund. In some cases, of course, the pension plan text may authorize the charging of such costs against the fund without any direction to that effect from the Tribunal. The arguments of the Company in support of its application for costs in this proceeding fall short of persuading me that the Tribunal should make the requested order for payment of those costs out of the fund for the Pension Plan, if it had the authority to make such an order.

In conclusion, therefore, I would not be prepared to make an order of costs in favour of the Applicants or the Company payable out of the fund for the Pension Plan. I recognize that Messrs. Bharmal and Short have not addressed the question, in their majority reasons, of whether the Tribunal should, in the circumstances of this proceeding, awardcosts to either or both of the parties payable from that fund. They did not have to do so, and did not in fact do so, given their view that the Tribunal does not have the authority to make such an award.

DATED at Toronto, Ontario, this 24th day of December, 2004

Colin H.H. McNairn, Chair of the Tribunal and of the Panel

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